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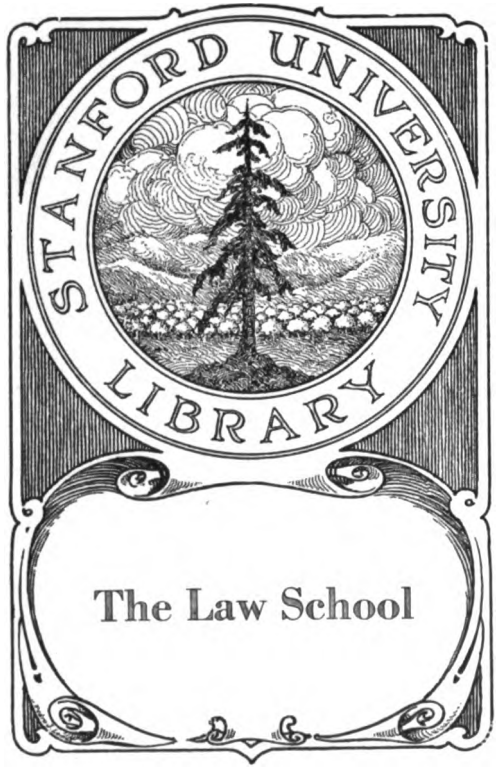

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THE

MILITARY LAWS

OF THE

UNITED STATES

1915

WITH SUPPLEMENT INCLUDING THE LAWS OF THE SIXTY-FOURTH CONGRESS, TO MARCH 5, 1917

FIFTH EDITION

WASHINGTON
GOVERNMENT PRINTING OFFICE
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WAR DEPARTMENT,

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WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
June 9, 1914.

The following military laws of the United States, revised and corrected to June 1, 1914, under the supervision of Brig. Gen. E. H. Crowder, Judge Advocate General of the Army, are approved and published for the information and government of the Regular and Volunteer Armies and the Organized Militia.

By Order of the Secretary of War:

(Signed) W. W. WOTHERSPOON,
Major General, Chief of Staff.

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PREFACE.

This compilation contains all the permanent laws of the United States directly affecting the War Department, the Regular Army, the Volunteers, and the Militia, including the legislation enacted by the 63d Congress, which adjourned March 4, 1915.

As originally prepared and submitted to the Public Printer, it embraced all legislation enacted prior to June 1, 1914, and was set up in that form. The publication was delayed, and it became necessary to include legislation enacted after that date, during the remainder of the second session and also during the third session of that Congress. This later legislation will be found in the supplement. The numerical designations of paragraphs in the supplement correspond to those of related paragraphs in the original text, being distinguished for the purpose of citation by a letter added to the paragraph number, thus following the style of previous compilations.

It has not been found practicable to include, as in prior editions, all the laws directly affecting the civil administration under the War Department, nor to include certain laws indirectly affecting the administration of the department and the military establishment without expanding the volume to an inconvenient size. Accordingly only such laws of this character as are frequently consulted at the War Department and other military headquarters have been retained and the others have been eliminated, citations to the latter being placed in a table of related statutes. The references in this list will enable any searcher for a statute to pass readily to the section of the Revised Statutes or the volume and page of the Statutes at Large where the act is to be found.

As a further aid to ready reference, there has been inserted a table which will enable one to pass from a particular paragraph of this compilation to the corresponding provisions of the Revised Statutes and the Statutes at Large.

E. H. CROWDER,
Judge Advocate General.

March 18, 1915.

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CHAPTER I.

THE PRESIDENT.

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1. *The executive power.*—The executive power[1] shall be vested in a President of the United States of America. He shall hold his office during the term of four years. * * * *Constitution, Art. II, sec. 1.*

2. *Commander in Chief—Cabinet—Pardoning power.*—The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States;[2] he may require the

[1] *The Executive Power.*—The executive power is vested in a President, and, as far as his powers are derived from the Constitution, he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power. (Kendall *v.* U. S., 12 Pet., 524, 610; Marbury *v.* Madison, 1 Cranch, 137, 166.)

Execution of the laws.—The President is required to see that the laws are faithfully executed, but he is not obliged to execute them himself. (IV Opin. Att. Gen., 515; Williams *v.* U. S., 12 Pet., 524, 610.) The President speaks and acts through the heads of the several Departments in relation to subjects which appertain to their respective duties. (Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755; Runkle *v.* U. S., 122 U. S., 543, 557.) As a general rule, the direction of the President is presumed in all instructions and orders issuing from the competent Department. (VII Opin. Att. Gen., 453.) In a matter which the law confides to the pure discretion of the Executive, the decision of the President, or proper head of Department, on any question of fact involved is conclusive, and is not subject to review by any other authority in the United States. (VI Opin. Att. Gen., 226 Marbury *v.* Madison, 1 Cr., 137, 166.) The President can not be restrained by injunction from executing a law of Congress. (Mississippi *v.* Johnson, 4 Wall., 475; Bates *v.* Taylor, 11 S. W. Rep., 266.)

[2] *Powers as Commander in Chief.*—As Commander in Chief he is authorized to direct the movements of the land and naval forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this Union, nor extend the operations of our institutions and laws beyond the limits before assigned to them by the legislative power. (Fleming *v.* Page, 9 How., 603, 615.) The power of command and control reserved by the Crown was placed by the Constitution in the

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opinion, in writing, of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respectice offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.[1] *Constitution, Art. II, sec. 2.*

3. *Term of office.*—The term of four years for which a President and Vice-President shall be elected shall in all cases commence on the 4th day of March next succeeding the day on which the votes of the electors have been given. *Sec. 152, R. S.*

4. *Succession of Vice President.*—In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall

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hands of the President. (Street *v.* U. S., 24 Ct. Cls., 230; 25, id., 515, 113, U. S., 299. See also, the chapter entitled The Employment of Military Force.)

May form military governments in occupied territory.—As an incident of the exercise of belligerent rights, the President may form military and civil governments in the territory of the enemy occupied by the armies of the United States. (Cross *v.* Harrison, 16 How., 164, 190, 193. The Grapeshot, 19 Wall., 129, 132.) He may also institute temporary governments within insurgent districts occupied by the national forces. (Texas *v.* White. 7 Wall., 700, 730.)

May establish courts in occupied territory—Limitation.—The courts established or sanctioned in Mexico during the War by the commanders of the United States forces were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory and to protect the inhabitants in their persons and property while it was occupied by the American armies. They were subject to the military power, and their decisions were under its control whenever the commanding officer thought proper to interfere. Neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations. (Jecker *v.* Montgomery, 13 How., 498, 515. The Grapeshot, 9 Wall., 129, 132.)

For authority to employ secret agents in time of war, see Totten *v.* U. S., 92 U. S., 105, 107. For powers and duties of the Executive in connection with the Army, the Militia, and the Army Regulations, etc., see the chapters so entitled.

The constitutional power of the President to command the Army and Navy, and of Congress "to make rules for the government and regulation of the land and naval forces" are distinct; the President can not, by military orders, evade the legislative regulations; Congress can not, by rules and regulations, impair the authority of the President as Commander in Chief. (Swaim *v.* U. S., 28 Ct. Cls., 173.) When a law is passed for the regulation of the Army which does not impair the efficiency of the President as Commander in Chief, he becomes, as to that law, an executive officer, and is limited in the discharge of his duties by the statute. (McBlair *v.* U. S., 19 id., 528.)

[1] *The pardoning power.*—A pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. (U. S. *v.* Wilson, 7 Pet., 150, 161; Coke, 3d Inst., 233.) The power which the Constitution confers upon the President to grant pardons can not be controlled or limited, in any manner, by Congress. (Ex parte Garland, 4 Wall., 333, 380; U. S. *v.* Klein, 13 Wall., 128, 147; IV Opin. Att. Gen., 458; 19 id., 476.)

Delivery and acceptance.—The pardon is a private though official act. It is official in that it is the act of the Executive; it is private in that it is delivered to the individual and not to the court. It must be pleaded, or brought officially to the knowledge of the court, in order that the court may give it effect in any given case. There is nothing peculiar in it to distinguish it from other acts.

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devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. *Constitution, Art. II, sec. 1, par. 5.*

5. *Succession of Cabinet Officers.*—In case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if

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It is a deed to the validity of which delivery is essential, and the delivery is not complete without acceptance. It may be rejected by the person to whom it is tendered, and, if rejected, there is no power in the court to force it upon the individual. (U. S. *v.* Wilson, 7 Pet., 150.)

Effects.—Subject to exceptions therein provided, a pardon by the President restores to its recipient all rights of property lost by the offense pardoned, unless the property has, by judicial process, become vested in other persons. (Osborn *v.* U. S., 91 U. S., 474; V Opin. Att. Gen., 532.)

Power to mitigate and commute.—The President may, by an exercise of the pardoning power, mitigate or commute a punishment imposed by any court of the United States. (Ex parte Wells, 18 How., 307; In re Ross, 140 U. S., 453.) In mitigating the sentence of a naval court-martial the President may substitute a suspension for a term of years without pay for an absolute dismissal from the service, as suspension is but an inferior degree of the same punishment. (I Opin. Att. Gen., 433.)

Conditional pardons.—The language of the Constitution is such that the power of the President to pardon conditionally is not one of inference, but is conferred in terms, the language being "to grant reprieves and pardons," which includes absolute as well as conditional pardons. Under this power the President can grant a conditional pardon to a person under sentence of death, offering to commute that punishment into an imprisonment for life. If this is accepted by the convict he has no right to contend that the pardon is absolute and the condition of it void. (Ex parte Wells, 18 How., 307; Osborn *v.* U. S., 91 U. S., 474; U. S. *v.* Wilson, 7 Pet., 150.) When a pardon is granted with conditions annexed the conditions must be performed before the pardon is of any effect. (Waring *v.* U. S., 7 Ct. Cls., 501.) One who claims the benefit of a pardon must be held to strict compliance with its conditions. (Haym *v.* U. S., 7 Ct. Cls., 443; Scott *v.* U. S., 8 id., 457.) The condition annexed to a pardon must not be impossible, unusual, or illegal; but it may, with the consent of the prisoner, be any punishment recognized by the statutes or by the common law as enforced by the State. (Lee *v.* Murphy, 22 Grat. (Va.), 789.)

Time of exercise.—The President of the United States has the conditional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve and for exceptional considerations. (VI Opin. Att. Gen., 20; 1 id., 341; 2 id., 275; 5 id., 687; Ex parte Garland, 4 Wall., 333; Dominick *v.* Davidson, 44 Ga., 457; 5 Blair *v.* Com., 25 Grat. (Va.), 850.) It is competent for the President to grant a pardon after the expiration of the term of sentence, thereby relieving from consequential disabilities. (Stetler's case, 1 Phil., IX, 38; Com. *v.* Bush, 2 Duv. (Ky.). 264.) The loss of rights of citizenship does not attach to those deserting the military or naval service in time of peace, after August 22, 1912. (37 Stat. 356.) For this act see page 1052.

Limitation upon the pardoning power.—The Constitution gives to Congress the power to dispose of the public property and to the President only the power to pardon crimes; and the President, having no title to forfeited property, can not restore it, though he may pardon the offense which caused the forfeiture. Property confiscated by judgment to the United States is beyond

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there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days

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the reach of executive clemency and is absolutely national property. The President has no right to dispose of that which belongs to the Nation. (Knote *v.* U. S., 10 Ct. Cls., 397, 406; 95 U. S., 149–157; U. S. *v.* Six Lots of Ground, 1 Woods, 234; Osborn *v.* U. S., 91 U. S., 474, 477.)

Pleading.—A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. * * * The pardon may possibly apply to a different person or to a different crime. It may be absolute or conditional. It may be controverted by the prosecutor and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought before the court by plea, motion, or otherwise. (U. S. *v.* Wilson, 7 Pet., 150, 161; Ex parte Reno, 66 Mo., 266.) The recital of a specific, distinct offense, in a pardon by the President, limits its operation to that offense, and such pardon does not embrace any other offense for which separate penalties and punishments are provided. (Ex parte Weimer, 8 Biss., C. Ct., 321.) The conviction having been of two offenses, and the pardon reciting only one, the pardon operates upon the offense recited. (State *v.* Foley, 15 Nev., 64.)

Appointments to office.—Appointments provided for by act of Congress, merely in general terms, must be made by and with the advice and consent of the Senate. (VI Opin. Att. Gen., 1.) When a person has been nominated to an office by the President, confirmed by the Senate, and his commission has been signed by the President, and the seal of the United States affixed thereto, his appointment to that office is complete. Congress may provide * * * that certain acts shall be done by the appointee before he shall enter on the possession of the office under the appointment. These acts then become conditions precedent to the complete investiture of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed, and when the person has performed the required condition, his title to enter on the possession of the office is also complete. (U. S. *v.* Le Baron, 19 How., 73, 78; U. S. *v.* Stewart, id. 79; Marbury *v.* Madison, 1 Cranch, 137.)

Powers of officers.—All the officers of the Government, from the highest to the lowest, are but agents with delegated powers, and if they act beyond the scope of their delegated powers their acts do not bind the principal. (U. S. *v.* Maxwell Grant, 21 Fed. Rep., 19.) An officer can only bind the Government by acts which come within a just exercise of his official power. (Hunter *v.* U. S., 5 Pet., 173, 178; The Floyd Acceptances, 7 Wall., 666; State *v.* Hastings, 12 Wis., 596.) It is a question of law for the court whether an act is a part of the official duty of a public officer. (U. S. *v.* Buchanan, 8 How., 83.) Every public officer is required to perform all duties which are strictly official, although they may be required by laws passed after he comes into office, and may be cumulative upon his original duties, and although his compensation therefor be wholly inadequate. In such case he must look to the bounty of Congress for any additional reward. (Andrews *v.* U. S., 2 Story, 202.) An officer is bound to use that care and diligence in the discharge of his duties that a conscientious and prudent man, acting under a just sense of his obligations, would exercise under the circumstances of a particular case, and if he fails and neglects to do so he is culpable. (U. S. *v.* Baldridge, 11 Fed. Rep., 552.)

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thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting. *Sec. 1, Act of Jan. 19, 1886 (24 Stat. 1).*

6. *Same—Limitations.*—The preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively. *Sec. 2, id.*

Presumptions as to official acts.—The acts of an officer to whom a public duty is assigned, within the sphere of that duty, are prima facie within his power. (U. S. *v.* Arredondo, 6 Pet., 691; U. S. *v.* Clarke, 8 id., 436, 452; Percheman *v.* U. S., 7 id., 51; Delassus *v.* U. S., 9 id., 117, 134; Strother *v.* Lucas, 12 id., 410, 438; U. S. *v.* Peralta, 19 How., 343, 347.) When a particular functionary is clothed with the duty of deciding a certain question of fact, his decision, in the absence of fraud, is conclusive. (Logan *v.* The County, 16 Wall., 6.) He who alleges that an officer intrusted with important duty has violated his instructions must show it. The courts ought to require very full proof that an officer has transcended his powers before they so determine. (U. S. *v.* Peralta, 19 How., 343, 347; Delassus *v.* U. S., 9 Pet., 117, 134.) When a public officer is to do any act on proof of certain facts, of the competency and sufficiency of which he is to judge, it is to be presumed, from the doing of the act, that the proof was regularly and satisfactorily made, and its sufficiency is not subject to reexamination. (Phil. and Tren. R. R. Co. *v.* Stimpson, 14 Pet., 448.)

Tenure.—The power to appoint includes the power to remove, when the Constitution has not otherwise provided, and when the laws of Congress have not fixed a tenure of office. (Ex parte Hennen, 13 Pet., 230; Parsons *v.* U. S., 167 U. S., 324; U. S. *v.* Avery, Deady, 204.) When Congress, by law, vests the appointment of inferior officers in the heads of departments, it may limit and restrict the power of removal as it deems best for the public interests. (U. S. *v.* Perkins, 116 U. S., 483.)

Resignation.—That a public office may be vacated by resignation is established by long and familiar practice, and is recognized by express provision of law. Nor can there be any doubt that a resignation may be effected by the concurrence of the officer and the appointing power; its essential elements are an intent to resign on the one side and an acceptance on the other. It may be either in writing or by parol, expressly or by implication. To perfect a resignation nothing more is necessary than that the proper authority manifest in some way its acceptance of the offer to resign. It then becomes effectual, and operates to relieve the incumbent either immediately or on the day specially fixed according to its terms. An offer to resign is revocable prior to acceptance; after acceptance and before it has taken effect it may be modified, or withdrawn by consent of both parties, but this control extends no further. When a resignation once takes effect the official relations of the incumbent are ipso facto dissolved; he has no longer any right to, or hold upon, the office. (XIV Opin. Att. Gen., 259.)

Removal.—In the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment. (In re Hennen, 13 Pet., 230, 259.) It was the purpose of Congress, in the repeal of the tenure of office sections of the Revised Statutes (secs. 1767–1775, Rev. Stat., repealed by act of Mar. 3, 1887, 24 Stat., 500), to again concede to the President the power of removal, if taken from him by the original tenure-of-office act, and, by reason of the repeal, to thereby enable him to remove an officer when in his discretion he regards it for the public good, although the term of office may have been limited by the words of the statute creating the office. (Parsons *v.* U. S., 167 U. S., 324. See, also, ninety-ninth article of war, secs. 1230, 1228. Rev. Stat., and articles 36 and 37 of articles for the government of the Navy; VI Opin. Att. Gen., 4; XII, id., 421; XV, id., 421; IV Cmp. Dec., 58, 466, 601, and Blake *v.* U. S., 103 U. S., 227.)

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7. *Treaties—Appointment of officers.*—He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and censent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of Departments.[1] *Constitution, Art. II, sec. 2, par. 2.*

8. *Recess appointments.*—The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. *Id, par. 3.*

9. *Commissions.*—The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate.[2] *Sec. 1773, R. S.*

10. *Notification of appointments.*—Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to all the proper accounting and disbursing officers of his Department. *Sec. 1774, R. S.*

11. *Notification of rejections and confirmations.*—The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries

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[1] *Public office.*—An office is a public station, or employment, conferred by the appointment of Government. The term embraces the ideas of tenure, emolument, and duties. * * * The duties are continuing and permanent, not occasional and transitory, and are defined by rules prescribed by Government and not by contract. * * * A Government office is different from a Government contract. The latter, from its nature, is necessarily limited in its duration and specific in its objects. The terms agreed upon define the rights and obligations of both parties, and neither may depart from them without the assent of the other. (U. S. *v.* Hartwell, 6 Wall., 385, 394; U. S. *v.* Maurice, 2 Brockenbrough, 103.) A public officer is the incumbent of an office "who exercises continuously, and as a part of the regular and permanent administration of the Government, its public powers, trusts, and duties." (Sheboygan Co. *v.* Parker, 3 Wall., 93, 96.) Unless a person in the service of the Government holds his place by virtue of an appointment by the President, or of one of the courts of justice or heads of departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States. (U. S. *v.* Mouat, 124 U. S., 303, 307; U. S. *v.* Germaine, 99 U. S., 508, 510; U S. *v.* Hendee, 124 U. S., 309; U. S. *v.* Smith, 124 U. S., 525.) Noncommissioned officers are not officers in the sense in which that term is generally used. (Babbitt *v.* U. S., 16 Ct. Cls., 202.)

[2] For statutory requirements in respect to commissions to military officers see chapter entitled Commissioned officers.

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of the Treasury, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session. *Sec. 1776, R. S.*

12. *Details of clerks to Executive Office.*—Employees of the Executive Departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States, for such temporary assistance as may be necessary. *Act of June 22, 1907 (34 Stat. 401).*

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CHAPTER II.

EXECUTIVE DEPARTMENTS IN GENERAL.

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13. *Temporary head of department.*—In case of the death, resignation, absence, or sickness of the head of any Department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine,[1] perform the duties of such head until a successor is appointed, or such absence or sickness shall cease. *Sec. 177, R. S.*

14. *Temporary chief of bureau.*—In case of the death, resignation, absence, or sickness of the chief of any Bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief[2] or of such officer, or if there be none, then the chief clerk of such Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease. *Sec. 178, R. S.*

15. *Same—Designation by President.*—In any of the cases mentioned in the two preceding sections, except the death, resignation, absence, or sickness of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.[3] *Sec. 179, R. S.*

16. *Restriction on temporary appointments.*—A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than thirty days. *Sec. 180, R. S., as amended by Act of Feb. 6, 1891 (26 Stat. 733).*

17. *Same.*—No temporary appointment, designation, or assignment of one officer to perform the duties of another, in the cases covered by sections one hundred and seventy-seven and one hundred and seventy-eight,[4] shall be made otherwise than as provided by those sections, except to fill a vacancy happening during a recess of the Senate. *Sec. 181, R. S.*

18. *Same—Extra compensation not allowed.*—An officer performing the duties of another office, during a vacancy, as authorized by sections one hundred and seventy-seven, one hundred and seventy-eight [Rev. Stat.], and one hundred and seventy-nine [id.], is not by reason thereof entitled to any other compensation than that attached to his proper office. *Sec. 182, R. S.*

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[1] Section 179, Revised Statutes, paragraph 15, post.
[2] See XIX Opin. Att. Gen., 503.
[3] Sections 177 and 178, Revised Statutes, paragraphs 13 and 14, ante. The vacancy occasioned by the retirement of the head of a staff department may be temporarily filled by an *ad interim* appointment, under the authority conferred by section 179, Revised Statutes. (XIX Opin. Att. Gen., 500.)
[4] Sections 177 and 178, Revised Statutes, paragraphs 13 and 14, ante.

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19. *Departmental regulations.*—The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.[1] *Sec. 161, R. S.*

20. *Duties of chief clerks.*—Each chief clerk in the several Departments, and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully performed. *Sec. 173, R. S.*

21. *Same—Monthly reports.*—Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case.

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[1] The President speaks and acts through the heads of the several Executive Departments in relation to subjects which appertain to their respective duties. (Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755.) It is the general theory of departmental administration that the heads of the Executive Departments are the executors of the will of the President. (X Opin. Att. Gen., 527.) As a general rule the direction of the President is to be presumed in all instructions and orders issuing from the competent Department. (VII id., 453.) Official instructions issued by the heads of the several Executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President. (VII id., 453.) The duties of the heads of the several Executive Departments are derived, in part, from the Constitution, and are, in part, imposed by statute. In the execution of the former they act as the representatives of the President, to whom they are responsible for their correct performance. For duties imposed by statute their responsibility is to the legislature, and they are controlled in all matters relating to performance by such statutory rules and regulations as Congress may see fit to impose. (See Marbury *v.* Madison, 1 Cr., 137, and par. 1, note 1.)

The executive power is vested in a President, and so far as his powers are derived from the Constitution he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power, but it by no means follows that every officer in every branch of that Department is under the exclusive direction of the President. * * * There are certain political duties imposed upon many officers in the Executive Department the discharge of which is under the direction of the President, but it would be an alarming doctrine that Congress can not impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution, and in such cases the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President, and this is emphatically the case where the duty is of a ministerial character. (Kendall *v.* U. S., 12 Pet., 524, 610. See, also, the title *Army Regulations* in the chapter entitled The Revised Statutes; The Statutes at Large; The Army Regulations.)

Ministerial and discretionary duties.—The duties performed by the heads of the several Executive Departments are either ministerial or discretionary or quasi judicial in character. "The question whether the legality of an act of the head of a Department be examinable in a court of justice or not must always depend on the nature of the act. By the Constitution of the United States the President is invested with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers, who act by his authority and in conformity to his orders. In such cases their acts are his acts, and whatever opinion may be entertained of the manner

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He shall revise such distribution from time to time, for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business. *Sec. 174, R. S.*

22. *Action on report.*—Each head of a Department, chief of a Bureau, or other superior officer, shall, upon receiving each monthly report of his chief clerk, rendered pursuant to the preceding section, examine the facts stated therein, and take such measures, in the exercise of the powers conferred upon him by law, as may be necessary and proper to amend any existing defects in the arrangement or dispatch of business disclosed by such report. *Sec. 175, R. S.*

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in which Executive discretion may be used, still there exists and can exist no power to control their discretion. The subjects are political. They respect the nation, not individual rights, and being intrusted to the Executive, the decision of the Executive is conclusive. * * * The conclusion is that where the heads of Departments are the political or confidential agents of the Executive, merely to execute the will of the President, nothing can be more perfectly clear than that their acts are only politically examinable. (Marbury *v.* Madison, 1 Cr., 137, 166; Kendall *v.* U. S., 12 Pet., 524, 611; Decatur *v.* Paulding, 14 Pet., 497, 515.) We are not aware of any case in England or this country in which it has been held that a public officer, acting to the best of his judgment and from a sense of duty, in a matter of account with an individual, has been held liable for an error of judgment. * * * A public officer is not liable to an action if he falls into error in a case where the act to be done is not merely a ministerial one but is one in relation to which it is his duty to exercise judgment and discretion, even though an individual may suffer by his mistake. A contrary principle would indeed be pregnant with the greatest mischiefs. (Kendall *v.* Stokes, 3 How., 87, 98; Gould *v.* Hammond, 1 McAll., 235, 243; Noble *v.* Union River Logging Co., 147 U. S., 165, 171.)

A ministerial duty the performance of which may in proper cases be required of the head of a Department by judicial process is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist and imposed by law. (Mississippi *v.* Johnson, 4 Wall., 475, 498; Marbury *v.* Madison, 1 Cr., 137; Kendall *v.* Stockton, 12 Pet., 524.) As a mandamus can only be granted because there is no other adequate remedy at law, an action for damages can not be afterwards sustained for the same cause of action, the two being inconsistent. (Kendall *v.* Stokes, 3 How., 87, 102.)

Liability for damages.—The executive officers of the United States are personally liable at law for damages, in the ordinary forms of action, for illegal official or ministerial acts or omissions to the injury of an individual. (Marbury *v.* Madison, 1 Cr., 137, 166; Gaines *v.* Thompson, 7 Wall., 347; Amy *v.* The Supervisors, 11 Wall., 136, 137, 166.) Where a ministerial officer acts in good faith he is not liable in exemplary damages for an injury done, but he can claim no further exemption where his acts are clearly against the law. (Tracy *v.* Swartwout, 10 Pet., 80.)

Measure of damages.—Where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct. A mistake as to his duty and honest intentions will not excuse the offender. (Amy *v.* The Supervisors, 11 Wall., 136.) Where an action is brought for an injury done in the discharge of an official duty, the damages are measured generally by the extent of that injury. (Bispham *v.* Taylor, 2 McLean, 408; Pierce *v.* Strickland, 2 Story, 292.)

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23. *Disbursing clerks—Appointments and bonds.*—The disbursing clerks authorized by law in the several Departments shall be appointed by the heads of the respective Departments, from clerks of the fourth class; and shall each give a bond to the United States for the faithful discharge of the duties of his office according to law in such amount as shall be directed by the Secretary of the Treasury, and with sureties to the satisfaction of the Solicitor of the Treasury; and shall from time to time renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerk of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as a clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year. *Sec. 176, R. S.*

24. *Same—Bond to cover acts of disbursing clerks.*—In case of the sickness or unavoidable absence of any disbursing clerk or disbursing agent of any executive department, independent bureau, or office, in Washington, District of Columbia, he may, with the approval of the head of the department, independent bureau, or office, in which said disbursing clerk or agent is employed, authorize the clerk of highest grade employed therein to act in his place, and to discharge all the duties by law or regulations of such disbursing clerk or agent. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct in like cases, of the disbursing clerk or disbursing agent, respectively, for whom he acts, and such acting officer shall be required by the head of the department, independent bureau, or office, to give bond to and in such sum as the disbursing clerk or disbursing agent may require. *Sec. 8, Act of Mar. 4, 1909 (35 Stat. 1027).*

25. *Authority to employ.*—Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year. *Sec. 169, R. S., Act of Mar. 3, 1875 (18 Stat. 360, 361).*

26. *Same—Appointment of women.*—Women may, in the discretion of the head of any Department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and

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conditions, and with the same compensations, as are prescribed for men. *Sec. 165 R. S.*

27. *Same—Restrictions.*—The executive officers of the Government are hereby prohibited from employing any clerk, agent, engineer, draughtsman, messenger, watchman, laborer, or other employee, in any of the Executive Departments in the city of Washington, or elsewhere beyond provision made by law. *Sec. 5, act of Aug. 15, 1876 (19 Stat. 169).*

28. *Same—From specific appropriations only.*—No civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after the first day of October next, be employed in any of the Executive Departments, or subordinate bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year; and no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall hereafter be employed at the seat of Government in any Executive Department or subordinate bureau or office thereof or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services. *Sec. 4, Act of Aug. 5, 1882 (22 Stat. 255).*

29. *Details for duty in the District of Columbia.*—After the first day of October next section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers, or other employees at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries, or from unused appropriations for salaries, shall be covered into the Treasury. *Sec. 4, Act of Aug. 5, 1882 (22 Stat. 255).*

30. *Same.*—Hereafter it shall be unlawful to detail civil officers, clerks, or other subordinate employees who are authorized or em-

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ployed under or paid from appropriations made for the military or naval establishments, or any other branch of the public service outside of the District of Columbia, except those officers and employees whose details are now especially provided by law, for duty in any bureau, office, or other division of any Executive Department in the District of Columbia, except temporary details for duty connected with their respective offices. *Sec. 6, Act of June 22, 1906 (34 Stat. 449).*

31. *Same.*—No clerk, messenger, or laborer at headquarters of divisions, departments, posts commanded by general officers, or office of the Chief of Staff shall be assigned to duty with any bureau in the War Department. *Act of Aug. 24, 1912 (37 Stat. 573).*

32. *Same—Penalty.*—That any person violating section four of the legislative, executive, and judicial appropriation Act approved August fifth, eighteen hundred and eighty-two (Statutes at Large, volume twenty-two, page two hundred and fifty-five), shall be summarily removed from office, and may also upon conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year. *Sec. 5, Act of Aug. 23, 1912 (37 Stat. 414).*

33. *Details from Government Printing Office.*—Hereafter no employee of the Government Printing Office shall be detailed to duties not pertaining to the work of public printing and binding in any executive department or other government establishment unless expressly authorized by law. *Sec. 1, Act of June 25, 1910 (36 Stat. 770).*

34. *Details within a Department.*—Each head of a Department may, from time to time, alter the distribution among the various bureaus and offices of his Department, of the clerks and other employees allowed by law, except such clerks or employees as may be required by law to be exclusively engaged upon some specific work, as he may find it necessary and proper to do, but all details hereunder shall be made by written order of the head of the Department, and in no case be for a period of time exceeding one hundred and twenty days: *Provided*, That details so made may, on expiration, be renewed from time to time by written order of the head of the Department, in each particular case, for periods of not exceeding one hundred and twenty days. All details heretofore made are hereby revoked, but may be renewed as provided herein. *Sec. 166, R. S., as amended by Sec. 3, Act of May 28, 1896 (29 Stat. 179).*

35. *Transfers—Lump sum appropriations.*—No part of any money contained herein or hereafter appropriated in lump sum shall be available for the payment of personal services at a rate of compensation in excess of that paid for the same or similar services during the preceding fiscal year; nor shall any person employed at a specific salary be hereafter transferred and hereafter paid from a lump-sum appropriation a rate of compensation greater than such specific

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salary, and the heads of departments shall cause this provision to be enforced: *Provided*, That this section shall not apply to mechanics, artisans, their helpers and assistants, laborers, or any other employees whose duties are of similar character and required in carrying on the various manufacturing or constructing operations of the Government. *Sec. 4, Act of Mar. 4, 1913 (37 Stat. 790).*

36. *Transfers between departments.*—It shall not be lawful hereafter for any clerk or other employee in the classified service in any of the Executive Departments to be transferred from one Department to another Department until such clerk or other employee shall have served for a term of three years in the Department from which he desires to be transferred. *Sec. 5, Act of June 22, 1906 (34 Stat. 449).*

37. *Voluntary service.*—Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.[1] *Act of Feb. 27, 1906 (34 Stat. 49).*

38. *Civil pension roll.*—The establishment of a civil pension roll, or an honorable service roll, or the exemption of any of the officers, clerks, and persons in the public service from the existing laws respecting employment in such service is hereby prohibited. *Sec. 4, Act of Feb. 24, 1899 (30 Stat. 890).*

[Section 2 of the act of June 2, 1900 (31 Stat., 261), contained a similar requirement.]

39. *Payments to incapacitated persons.*—The appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons incapacitated otherwise than temporarily for performing such service.[2] *Sec. 3, Act of Mar. 4, 1913 (37 Stat. 790).*

40. *Efficiency ratings—Promotions, reductions, or removals.*—The Civil Service Commission shall, subject to the approval of the President, establish a system of efficiency ratings for the classified service in the several executive departments in the District of Columbia based upon records kept in each department and independent establishment with such frequency as to make them as nearly as possible records of fact. Such system shall provide a minimum rating of efficiency which must be attained by an employee before he may be promoted; it shall also provide a rating below which no employee may fall without being demoted; it shall further provide for a rating below which no employee may fall without being dismissed for inefficiency. All promotions, demotions, or dismissals shall be governed by provisions of the civil service rules. Copies of

[1] See 30 Ops. Atty. Gen. 51; 125 U. S. 273, 305. See also sec. 1195.

[2] This provision will be found in all of the recent appropriation acts for the legislative, executive, and judicial expenses of the Government.

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all records of efficiency shall be furnished by the departments and independent establishments to the Civil Service Commission for record in accordance with the provisions of this section: *Provided*, That in the event of reductions being made in the force in any of the executive departments no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped, or reduced in rank or salary.

Any person knowingly violating the provisions of this section shall be summarily removed from office, and may also upon conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year: *Provided*, That in the event of reductions being made in the force in any of the executive departments no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped, or reduced in rank or salary. (*Sec. 4, Act of Aug. 23, 1912 (37 Stat. 413)*.

41. *Retention of discharged soldiers, sailors, etc.*—In making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States,[1] and the widows and orphans of deceased soldiers and sailors. *Sec. 3, Act of Aug. 15, 1876 (19 Stat. 169)*.

42. *Removal on charges.*—That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: *Provided, however*, That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or

[1] To entitle an honorably discharged soldier to retention in the civil service in preference to a civilian, he must be *equally qualified* (sec. 3, act of Aug. 15, 1876, 19 Stat. 169), which must be determined by the head of the Department (Keim *v.* U. S., 33 Ct. Cls., 174. But see par. 40 ante.)

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proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by any such person or groups or persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with. *Sec. 6, Act of Aug. 24, 1912 (37 Stat. 555).*

43. *Four classes of clerks.*—The clerks in the Departments shall be arranged in four classes, distinguished as the first, second, third, and fourth classes. *Sec. 163, R. S., Act of Aug. 15, 1876 (19 Stat. 169).*

44. *Salaries.*—The annual salaries of clerks and employees in the Departments, whose compensation is not otherwise prescribed, shall be as follows:

First. To clerks of the fourth class, eighteen hundred dollars.

Second. To clerks of the third class, sixteen hundred dollars.

Third. To clerks of the second class, fourteen hundred dollars.

Fourth. To clerks of the first class, twelve hundred dollars.

Fifth. To the women employed in duties of a clerical character, subordinate to those assigned to clerks of the first class, including copyists and counters, or temporarily employed to perform the duties of a clerk, nine hundred dollars.

Sixth. To messengers, eight hundred and forty dollars.

Seventh. To assistant messengers, seven hundred and twenty dollars.

Eighth. To laborers, seven hundred and twenty dollars.

Ninth. To watchmen, seven hundred and twenty dollars. *Sec. 167, R. S.*

45. *Same—Temporary clerks.*—Except when a different compensation is expressly prescribed by law, any clerk temporarily employed to perform the same or similar duties with those belonging to clerks of either class is entitled to the same salary as is allowed to clerks of that class. *Sec. 168, R. S.*

46. *Compensation for extra services.*—No money shall be paid to any clerk employed in either Department at an annual salary, as compensation for extra services, unless expressly authorized by law. *Sec. 170, R. S.*

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47. *Same—For performing duty of another.*—No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law. *Sec. 1764, R. S.*

48. *Not less than seven hours—Extension.*—Hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend the hours of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation.[1] *Sec. 7, act of Mar. 15, 1898 (30 Stat. 316).*

49. *Extension if work is in arrears.*—Hereafter it shall be the duty of the head of each Executive Department to require monthly reports to be made to him as to the condition of the public business in the several bureaus or offices of his Department at Washington; and in each case where such reports disclose that the public business is in arrears, the head of the Department in which such arrears exist shall require, as provided herein, an extension of the hours of service to such clerks or employees as may be necessary to bring up such arrears of public business. *Id.*

50. *Annual and sick.*—The head of any Department may grant thirty days' annual leave with pay in any one year to each clerk or employee: *And provided further*, That where some member of the immediate family of a clerk or employee is afflicted with a contagious disease and requires the care and attendance of such employee, or where his or her presence in the Department would jeopardize the health of fellow-clerks, and in exceptional and meritorious cases, where a clerk or employee is personally ill, and where to limit the annual leave to thirty days in any one calendar year would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay, not exceeding thirty days in any one case or in any one calendar year.

This section shall not be construed to mean that so long as a clerk or employee is borne upon the rolls of the Department in excess of

[1] This requirement has been held by the Comptroller of the Treasury not to apply to laborers and mechanics whose compensation is not fixed by law or regulations. (IV Comp. Dec., 578; see, also, Hurlburt v. U. S., 30 Ct. Cls., 16; also 29 Op. Att. Gen., 481.)

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the time herein provided for or granted that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave.[1] *Sec. 7, Act of Mar. 15, 1898 (30 Stat. 316).*

51. *Same.*—Nothing contained in section seven of the act making appropriations for legislative, executive, and judicial expenses of the Government for the fiscal year eighteen hundred and ninety-nine, approved March fifteenth, eighteen hundred and ninety-eight, shall be construed to prevent the head of any Executive Department from granting thirty days' annual leave with pay in any one year to a clerk or employee, notwithstanding such clerk or employee may have had during such year not exceeding thirty days' leave with pay on account of sickness as provided in said section seven. *Act of July 7, 1898 (30 Stat. 653).*

52. *Same—Sundays and holidays.*—The thirty days' annual leave of absence with pay in any one year to clerks and employees in the several Executive Departments authorized by existing law shall be exclusive of Sundays and legal holidays. *Sec. 4, Act of Feb. 24, 1899 (30 Stat. 890).*

53. *Holidays in District of Columbia.*—The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor's Holiday; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public fasting or thanksgiving, and the day of the inauguration of the President, in every fourth year, shall be holidays in the District for all purposes. *Sec. 1889, Code, District of Columbia.*

54. *Holidays with pay—Per diem employees.*—The employees of the navy-yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive

[1] Under the above provision it is discretionary with the heads of the several Executive Departments to grant or refuse leave of absence, and their acts can not be reviewed. Absence without leave is absence without pay; absence with leave is subject to such conditions and limitations as may be imposed. (Hurlburt *v.* U. S., 30 Ct. Cls., 16.) The word "meritorious" as used above is surplusage; the word "exceptional" in the same statute raises a question of fact upon which the Attorney-General can not advise. (XX Opin. Att. Gen., 716.)

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the same pay as on other days. *Joint Res. No. 5, Jan. 6, 1885* (*23 Stat. 516.*)

(In the act of January 6, 1895, which provides that "the employees of the navy-yard, Government Printing Office, Bureau of Engraving and Printing, and all other per diem employees" shall be allowed pay for legal holidays, the provision "all other per diem employees" is to be restricted to employees whose employment is similarly permanent or continuous. (IV Comp. Dec., 499.))

55. *The same—Decoration Day.*—All per diem employees of the Government, on duty at Washington or elsewhere in the United States, shall be allowed the day of each year which is celebrated as "Memorial" or "Decoration Day" and the fourth of July of each year, as holiday, and shall receive the same pay as on other days. *Joint Res. No. 6, Feb. 23, 1887* (*24 Stat. 644*).

56. *Same—Labor Day.*—The first Monday of September in each year, being the day celebrated and known as Labor's Holiday, is hereby made a legal public holiday, to all intents and purposes, in the same manner as Christmas, the first day of January, the twenty-second day of February, the thirtieth day of May, and the fourth day of July are now made by law public holidays. *Act of June 28, 1894* (*28 Stat. 96*).

(For a requirement in respect to the exclusion of Sundays and legal holidays in the reckoning of annual leaves of absence, see section 4, act of February 24, 1899 (30 Stat. 890), paragraph 52, ante.)

57. *Oaths of office—Without compensation.*—The chief clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion. *Act of Aug. 29, 1890* (*26 Stat. 371*).

58. *Same.*—No officer, clerk, or employee of any Executive Department who is also a notary public or other officer authorized to administer oaths shall charge or receive any fee or compensation for administering oaths of office to employees of such Department required to be taken on appointment or promotion therein. *Act of Aug. 29, 1890* (*26 Stat. 371*).

59. *Oaths of office.*—Section seventeen hundred and fifty-six of the Revised Statutes is hereby repealed, and hereafter the oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section seventeen hundred and fifty-seven of the Revised Statutes. But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular sub-

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ordinate offices and employments. *Sec. 2, Act of May 13 1884 (23 Stat. 22).*

(Paragraph 60 post.)

60. *Same.*—Whenever any person * * * is elected or appointed to any office of honor or trust under the Government of the United States, * * * he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath:[1] "I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office[2] on which I am about to enter. So help me God. *Sec. 1757, R. S., as amended by the Act of June 6, 1898 (30 Stat. 432).*

61. *Same.*—The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six, or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, Department, or court to which the office in respect to which the oath is made may appertain. *Sec. 1759, R. S.*

(Sec. 1756, R. S., was repealed by the act of May 13, 1884 (23 Stat. 22)).

62. *Who may administer oath.*—The oath of office required by the preceding section may be taken before any officer who is authorized either by the laws of the United States, or by the local municipal

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[1] The disabilities to hold office under the United States imposed under the authority conferred by section 3 of the fourteenth amendment to the Constitution, and which were embodied in section 1218 of the Revised Statutes, as modified by the acts of May 13, 1884 (23 Stat. 21), and March 31, 1896 (29 Stat. 84), were, by the act of June 6, 1898, finally and entirely removed.

[2] For definition of office see U. S. *v.* Germaine, 99 U. S., 508, and Mouat *v.* U. S., 124 U. S., 303. See, also, note 1 to paragraph 4, *ante.* Clerks appointed by the head of an Executive Department are officers, and are required by the Constitution to take the oath of office. (1 Comp. Dec., 4.) An employee whose compensation is fixed by the head of an Executive Department is not required to take a new oath of office when his compensation is increased. (Id., 267.) When by law a change is made in the compensation of an office, and in the manner in which such compensation shall be ascertained, the incumbent thereof is entitled from the date of the act to the compensation so fixed and is not required to take a new oath of office. (Id., 313.)

Under the act of February 14, 1889 (25 Stat. 670), S. was appointed from civil life to the position of major of engineers in the Army, and thereupon was placed on the retired list of the Army as of that grade; advised, that he must take the oath required by section 1756 of the Revised Statutes, and that this act would be in law a legal acceptance of the office, and, as such, a sufficient formal acceptance. (XIX Opin. Att. Gen., 283.)

Section 1757, Revised Statutes, and the act of May 13, 1884 (23 Stat. 22), which require generally that an officer shall take the oath of office prescribed "before entering upon the duties of his office" are directory only (U. S. *v.* Eaton, 169 U. S., 331), and a deputy clerk of a United States court whose acceptance of office on the same day he was appointed was evidenced by his entrance upon duty, and who subsequently took the oath, is entitled to compensation from that day. (4 Comp. Dec., 496.)

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law, to administer oaths, in the State, Territory, or district where such oath may be administered. *Sec. 1758, R. S.*

63. *Administration of oaths.*—In all cases in which under the laws of the United States oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace. *Sec. 1778, R. S.*

64. *Oaths in investigations.*—Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army, Navy, Marine Corps or Revenue-Cutter Service detailed to conduct an investigation, and the recorder, and if there be none the presiding officer, of any military, naval, or Revenue-Cutter Service board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation. *Sec. 183, R. S., as amended by the Act of Feb. 13, 1911 (36 Stat. 898).*

65. *Oaths to travel accounts.*—After June thirtieth, nineteen hundred and twelve, postmasters, assistant postmasters, collectors of customs, collectors of internal revenue, chief clerks of the various executive departments and bureaus, or clerks designated by them for the purpose, the superintendent, the acting superintendent, custodian, and principal clerks of the various national parks and other Government reservations, superintendent, acting superintendents, and principal clerks of the different Indian superintendencies or Indian agencies, and chiefs of field parties, are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered, or when rendered on demand after said date by notaries public, who at the time are also salaried officers or employees of the United States, no charge shall be made; and on and after July first, nineteen hundred and twelve, no fee or money paid for the services herein described shall be paid or reimbursed by the United States. *Sec. 8, Act of Aug. 24, 1912 (37 Stat. 487).*

66. *Pay during disability—Limit.*—When, on or after August first, nineteen hundred and eight, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals, or navy-yards, or in the construction of river

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and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, is injured in the course of such employment, such employee shall be entitled to receive for one year thereafter, unless such employee, in the opinion of the Secretary of Commerce and Labor, be sooner able to resume work, the same pay as if he continued to be employed, such payment to be made under such regulations as the Secretary of Commerce and Labor may prescribe: *Provided*, That no compensation shall be paid under this Act where the injury is due to the negligence or misconduct of the employee injured, nor unless said injury shall continue for more than fifteen days. All questions of negligence or misconduct shall be determined by the Secretary of Commerce and Labor. *Sec. 1, Act of May 30, 1908 (35 Stat. 556)*.

(See Circular A, War Department, January 12, 1910.)

67. *In case of death payable to widow, etc.*—If any artisan or laborer so employed shall die during the said year by reason of such injury received in the course of such employment, leaving a widow, or a child or children under sixteen years of age, or a dependent parent, such widow and child or children and dependent parent shall be entitled to receive, in such portions and under such regulations as the Secretary of Commerce and Labor may prescribe, the same amount, for the remainder of the said year, that said artisan or laborer would be entitled to receive as pay if such employee were alive and continued to be employed: *Provided*, That if the widow shall die at any time during the said year her portion of said amount shall be added to the amount to be paid to the remaining beneficiaries under the provisions of this section, if there be any. *Sec. 2, Id.*

(See Circular A, War Department, January 12, 1910.)

68. *Evidence by beneficiaries.*—In the case of any accident which shall result in death, the persons entitled to compensation under this Act or their legal representatives shall, within ninety days after such death, file with the Secretary of Commerce and Labor an affidavit setting forth their relationship to the deceased and the ground of their claim for compensation under the provisions of this Act. This shall be accompanied by the certificate of the attending physician setting forth the fact and cause of death, or the nonproduction of the certificate shall be satisfactorily accounted for. In the case of incapacity for work lasting more than fifteen days, the injured party desiring to take the benefit of this Act shall, within a reasonable period after the expiration of such time, file with his official superior, to be forwarded through regular official channels to the Secretary of Commerce and Labor, an affidavit setting forth the

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grounds of his claim for compensation, to be accompanied by a certificate of the attending physician as to the cause and nature of the injury and probable duration of the incapacity, or the nonproduction of the certificate shall be satisfactorily accounted for. If the Secretary of Commerce and Labor shall find from the report and affidavit or other evidence produced by the claimant or his or her legal representatives, or from such additional investigation as the Secretary of Commerce and Labor may direct, that a claim for compensation is established under this Act, the compensation to be paid shall be determined as provided under this Act and approved for payment by the Secretary of Commerce and Labor. *Sec. 4, Id.*

(See Circular A, War Department, January 12, 1910.)

69. *Not payable to assignees or creditors.*—Payments under this Act are only to be made to the beneficiaries or their legal representatives other than assignees, and shall not be subject to the claims of creditors. *Sec. 6, Id.*

70. *Medical examination.*—The employee shall, whenever and as often as required by the Secretary of Commerce and Labor, at least once in six months, submit to medical examination, to be provided and paid for under the direction of the Secretary, and if such employee refuses to submit to or obstructs such examination his or her right to compensation shall be lost for the period covered by the continuance of such refusal or obstruction. *Sec. 5, Id.*

71. *Reports regarding accidents.*—Whenever an accident occurs to any employee embraced within the terms of the first section of this Act, and which results in death or a probable incapacity for work, it shall be the duty of the official superior of such employee to at once report such accident and the injury resulting therefrom to the head of his Bureau or independent office, and his report shall be immediately communicated through regular official channels to the Secretary of Commerce and Labor. Such report shall state, first, the time, cause, and nature of the accident and injury and the probable duration of the injury resulting therefrom; second, whether the accident arose out of or in the course of the injured person's employment; third, whether the accident was due to negligence or misconduct on the part of the employee injured; fourth, any other matters required by such rules and regulations as the Secretary of Commerce and Labor may prescribe. The head of each Department or independent office shall have power, however, to charge a special official with the duty of making such reports. *Sec. 3, Id.*

(See Circular A, War Department, January 12, 1910.)

72. *Contract for exemption invalid.*—The United States shall not exempt itself from liability under this Act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void. *Sec. 7, Id.*

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CONTINGENT FUNDS.

73. *Purchases from contingent fund.*—No part of the contingent fund appropriated to any Department, bureau, or office, shall be applied to the purchase of any articles except such as the head of the Department shall deem necessary and proper to carry on the business of the Department, bureau, or office, and shall, by written order, direct to be procured.[1] *Sec. 3683, R. S.*

74. *Use for official and clerical compensation.*—No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation. *Sec. 3682, R. S.*

(Section 3682, Revised Statutes, prohibits, absolutely, the use for official or clerical compensation of any money appropriated for contingent, incidental, or miscellaneous purposes. (I Comp. Dec., 392; Id., 410.) The Revised Statutes (section 3682) forbid money appropriated for contingent, incidental, or miscellaneous purposes being used for official or clerical compensation. The adjectives "contingent," "incidental," and "miscellaneous" have a technical and well-understood meaning; and, where a specific appropriation is made for specific objects, such as clerks, messengers, light, fuel, no disbursement can be made therefor from the appropriation for "miscellaneous expenses." (22 Ct. Cls. 269.)

(The words "contingent expenses" as employed in acts making appropriations, means such incidental, casual, and unforeseen expenses as are necessary and appropriate to the execution of duties required by law in connection with the object for which the appropriation was made. There is no discretion conferred upon heads of departments to use such appropriations for other purposes. (IV Comp. Dec., 287).)

75. *Apportionment of contingent funds.*—In addition to the apportionment required by the so-called antideficiency Act, approved February twenty-seventh, nineteen hundred and six (Statutes at Large, volume thirty-four, page forty-nine), the head of each executive department shall, on or before the beginning of each fiscal year, apportion to each office or bureau of his department the maximum amount to be expended therefor during the fiscal year out of the contingent fund or funds appropriated for the entire year for the department, and the amounts so apportioned shall not be increased or diminished during the year for which made except upon the written direction of the head of the department, in which there shall be fully expressed his reasons therefor; and hereafter there shall not be purchased out of any other fund any article for use in any office or bureau of any executive department in Washington, District of

[1] Section 3683, Revised Statutes, requires that the written order therein mentioned shall be given by the head of the Department before the articles to be paid for from the contingent fund are procured, and a subsequent approval is not sufficient. (II Comp. Dec., 1.) This section applies only to cases where an appropriation is made in a lump sum for "contingent, incidental, or miscellaneous expenses," or under similar words, and where Congress has specifically designated appropriations for enumerated items as being for "contingent, incidental, or miscellaneous expenses." (Id., 42.) When an item is properly payable from an appropriation for contingent expenses, the discretion of the officer charged with the duty of expending said fund is not subject to review by the accounting officers upon any question as to the necessity or advisability of his expenditures. (Id., 80. XVIII Opin. Att. Gen., 424.)

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Columbia, which could be purchased out of the appropriations made for the regular contingent funds of such department or of its offices or bureaus. *Sec. 6, Act of Aug. 23, 1912 (37 Stats. 414).*

76. *Expenditure for newspapers.*—The amount expended in any one year for newspapers, for any Department, except the Department of State, including all the bureaus and offices connected therewith, shall not exceed one hundred dollars. *Sec. 192, R. S., as amended by Act of June 22, 1906 (34 Stat. 449).*

(By Act of March 2, 1903 (32 Stat. 929), it was provided that this section "shall not apply to the subscriptions to newspapers by the military information division for the fiscal years ending" June 30, 1900, 1901, 1902, 1903, and thereafter.)

77. *Same.*—No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office. *Sec. 1779, R. S.*

78. *Law books, books of reference, etc.*—Hereafter law books, books of reference, and periodicals for use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses[1] or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. *Sec. 3, Act of Mar. 15, 1898 (30 Stat. 316).*

79. *Annual report of expenditures.*—The head of each Department shall make an annual report to Congress, giving a detailed statement of the manner in which the contingent fund for his Department, and for the bureaus and offices therein, has been expended, giving the names of every person to whom any portion thereof has been paid; and if for anything furnished, the quantity and price; and if for any service rendered, the nature of such service, and the time employed, and the particular occasion or cause, in brief, that

[1] The words "contingent expenses," as employed in acts making appropriations, mean such incidental, casual, and unforeseen expenses as are necessary and appropriate to the execution of duties required by law in connection with the object for which the appropriation is made. (IV Comp. Dec., 287.) There is no discretion conferred upon heads of Departments to use such appropriations for other purposes. (Id., 287.)

The provisions in the act of March 15, 1898, that "hereafter law books, books of reference, and periodicals for the use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose, unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation" does not apply to those branches of the public service located outside of Washington, nor to the Army, which is not a part of the War Department proper. (Id., 551.)

A newspaper is not a periodical within the meaning of the requirement above set forth in the act of March 15, 1898 (30 Stat. 316). (Id., 694.)

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rendered such service necessary; and the amount of all former appropriations in each case on hand, either in the Treasury or in the hands of any disbursing officer or agent. And he shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts of all the moneys which may have been from time to time during the next preceding year expended by them, and shall communicate the results of such returns and the sums total, annually, to Congress. *Sec. 193, R. S.*

80. *Same.*—Hereafter a detailed statement of the expenditure for the preceding year of all sums appropriated for contingent expenses of the independent treasury, or in any Department or bureau of the Government, shall be presented to Congress at the beginning of each regular session. *Act of Mar. 3, 1877 (19 Stat. 306).*

81. *Membership fees, etc.*—No money appropriated by this or any other Act shall be expended for membership fees or dues of any officer or employee of the United States or of the District of Columbia in any society or association or for expenses of attendance of any person at any meeting or convention of members of any society or association, unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purposes or are provided for in express terms in some general appropriation. *Sec. 8, Act of June 26, 1912 (37 Stats. 184).*

82. *Carriages or other vehicles.*—No part of any money appropriated by this or any other Act shall be used for purchasing, maintaining, driving, or operating any carriage or vehicle (other than those for the use of the President of the United States, the heads of the Executive Departments, and the Secretary to the President, and other than those used for transportation of property belonging to or in the custody of the United States), for the personal or official use of any officer or employee of any of the Executive Departments or other Government establishments at Washington, District of Columbia, unless the same shall be specifically authorized by law or provided for in terms by appropriation of money, and all such carriages and vehicles so procured and used for official purposes shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. *Sec. 4, Act of Feb. 3, 1905 (33 Stat. 687).*

83. *Telephone service.*—No money appropriated by this or any other Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, except for long-distance telephone tolls required strictly for the public business, and so shown by vouchers duly sworn to and

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approved by the head of the department, division, bureau, or office in which the official using such telephone or incurring the expense of such tolls shall be employed. *Sec. 7, Act of Aug. 23, 1912 (37 Stats. 414).*

84. *Transportation of remains of deceased employees.*—Hereafter the heads of Departments shall not authorize any expenditure in connection with transportation of remains of deceased employees, except when otherwise specifically provided by law. *Act of June 7, 1897 (30 Stat. 86).*

85. *Distribution of publications.*—No money appropriated by this or any other Act shall be used after the first day of October, nineteen hundred and twelve, for services in any executive department or other Government establishment at Washington, District of Columbia, in the work of addressing, wrapping, mailing, or otherwise dispatching any publication for public distribution, except maps, weather reports, and weather cards issued by an executive department or other Government establishment at Washington, District of Columbia, or for the purchase of material or supplies to be used in such work; and on and after October first, nineteen hundred and twelve, it shall be the duty of the Public Printer to perform such work at the Government Printing Office. Prior to October first, nineteen hundred and twelve, each executive department and other Government establishment at Washington, District of Columbia, shall transfer to the Public Printer such machines, equipment, and materials as are used in addressing, wrapping, mailing, or otherwise dispatching publications; and each head of such executive department and other Government establishment at Washington, District of Columbia, shall furnish from time to time to the Public Printer mailing lists, in convenient form, and changes therein, or franked slips, for use in the public distribution of publications issued by such department or establishment; and the Public Printer shall furnish copies of any publication only in accordance with the provisions of law or the instruction of the head of the department or establishment issuing the publication. The employment of all persons in the several executive departments and other Government establishments at Washington, District of Columbia, wholly in connection with the duties herein transferred to the Public Printer, or whose services can be dispensed with or devolved upon another because of such transfer, shall cease and determine on or before the first day of October, nineteen hundred and twelve, and their salaries or compensation shall lapse for the remainder of the fiscal year nineteen hundred and thirteen and be covered into the Treasury. A detail statement of all machines, equipment, and material transferred to the Government Printing Office by operation of this

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provision and of all employments discontinued shall be submitted to Congress at its next session by the head of each executive department and other Government establishments at Washington, District of Columbia, in the annual estimates of appropriations: *Provided*, That nothing in this section shall be construed as applying to orders, instructions, directions, notices, or circulars of information, printed for and issued by any of the executive departments or other Government establishments or to the distribution of public documents by Senators or Members of the House of Representatives or to the folding rooms and documents rooms of the Senate or House of Representatives. *Sec. 8, Act of Aug. 23, 1912 (37 Stats. 414).*

86. *Annual estimates—Book of Estimates.*—All annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the Book of Estimates prepared under his direction. *Sec. 3669, R. S.; Acts of June 20 1874 (18 Stat. 96, 109, 111); Mar. 3, 1875 (18 Stat. 355, 370); Aug. 15, 1876 (19 Stat. 200).*

87. *Same—Date of submission.*—Hereafter it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the fifteenth day of October of each year, their annual estimates for the public service, to be included in the Book of Estimates prepared by law under his direction, and in case of failure to furnish estimates as herein required it shall be the duty of the Secretary of the Treasury to cause to be prepared in the Treasury Department, on or before the first day of November of each year, estimates for such appropriations as in his judgment shall be requisite in every such case, which estimates shall be included in the Book of Estimates prepared by law under his direction for the consideration of Congress. *Sec. 5, Act of Mar. 3, 1901 (31 Stat. 1009).*

88. *Statement of outstanding appropriations.*—The head of each Department, in submitting to Congress his estimates of expenditures required in his Department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure. *Sec. 3665, R. S.*

89. *Explanation of variation from current appropriations.*—Whenever the head of a Department, being about to submit to Congress the annual estimates of expenditures required for the coming year, finds that the usual items of such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items not theretofore usual are introduced into such estimates for any year, he shall accompany

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the estimates by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added. *Sec. 3664, R. S.*

90. *Order and arrangement.*—Hereafter the estimates for expenses of the Government, except those for sundry civil expenses, shall be prepared and submitted each year according to the order and arrangement of the appropriation Acts for the year preceding. And any changes in such order and arrangement, and transfers of salaries from one office or bureau to another office or bureau, or the consolidation of offices or bureaus desired by the head of any Executive Department may be submitted by note in the estimates. *Sec. 4, Act of June 22, 1906 (34 Stat. 448).*

91. *Special or additional estimates.*—Hereafter the heads of the several Executive Departments and all other officers authorized or required to make estimates for the public service shall include in their annual estimates furnished the Secretary of the Treasury for inclusion in the Book of Estimates all estimates of appropriations required for the service of the fiscal year for which they are prepared and submitted, and special or additional estimates for that fiscal year shall only be submitted to carry out laws subsequently enacted, or when deemed imperatively necessary for the public service by the Department in which they shall originate, in which case such special or additional estimate shall be accompanied by a full statement of its imperative necessity and reasons for its omission in the annual estimates. *Id.*

92. *Estimates for deficiencies.*—Hereafter all estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; and the said Secretary shall first cause the same to be properly classified, compiled, indexed, and printed, under the supervision of the chief of the division of warrants, estimates, and appropriations of his Department. *Sec. 2, Act of July 7, 1884 (23 Stat. 254.)*

93. *Manner of preparing.*—The heads of Departments, in communicating estimates of expenditures and appropriations to Congress, or to any of the committees thereof, shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of the Revised Statutes, as the case

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may be, and the section of the act in which the authority is to be found.[1] *Sec. 3960, R. S. Act of Mar. 3, 1875 (18 Stat. 370).*

94. *Printing and binding.*—Hereafter there shall be submitted in the regular annual estimates to Congress under and as a part of the expenses for "Printing and binding," estimates for all printing and binding required by each of the Executive Departments, their bureaus and offices, and other Government establishments at Washington, District of Columbia, for each fiscal year; and after the fiscal year nineteen hundred and seven no appropriations other than those made specifically and solely for printing and binding shall be used for such purposes in any Executive Department or other Government establishment in the District of Columbia: *Provided*, That nothing in this section shall apply to stamped envelopes, or envelopes and articles of stationery other than letter heads and note heads, printed in the course of manufacture. *Sec. 2, Act of June 30, 1906 (34 Stat. 762).*

[This statute is understood to supersede sec. 3661, R. S.]

95. *Salaries.*—All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution.[2] *Sec. 3662, R. S.*

96. *Lump sum appropriations.*—Hereafter there shall be submitted, in the annual Book of Estimates, following every estimate for a gen-

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[1] The policy of Congress in respect to annual appropriations is contained in sections 3660, 3664, 3665, 3675, 3678, 3679, and 3690 of the Revised Statutes. A reading of their provisions will show conclusively, we think, that Congress has restricted in every possible way the expenditures and expenses and liabilities of the Government, so far as executive officers are concerned, to the specific appropriations of each fiscal year. (Wilder *v.* U. S., 16 Ct. Cls., 528, 543.) The estimates must relate to expenditures based upon the enactments of Congress and not to the payment of damages. (Pitman *v.* U. S., 20 id., 253, 256.) And to expenditures for the public service during the ensuing fiscal year. (McCallum *v.* United States, 17 id., 92; Conn. Mut. Life Ins. Co. *v.* U. S., 21 id., 195, 200.)

[2] A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly repeal it. (U. S. *v.* Langston, 118 U. S., 389.) It is otherwise, however, when the sum appropriated is "in full compensation" for the salary of a particular officer, in which case the earlier act is suspended for the time covered by the appropriation. (U. S. *v.* Fisher, 109 U. S., 143; U. S. *v.* Mitchell, id., 146.) A salary that is established by statute can not be increased nor diminished by executive officers. It is not a subject of contract between such officers. The incumbent of an office is entitled to the salary attached thereto by law, and if he receives a less sum from disbursing officers, he can claim and receive the balance. (Dyer *v.* U. S., 20 Ct. Cls., 166, 171; Adams *v.* U. S., id., 115.) Such recovery may be had though, by terms of his appointment, he was to receive less and though he may have been compelled to execute a receipt in full therefor. (Id.)

It is not within the power of the head of an Executive Department to reduce or change the salary of an officer which Congress has specifically prescribed; and an agreement to that effect, being contrary to public policy, will not be enforced or given effect as an estoppel. (Miller *v.* U. S., 103 Fed Rep., 413.) But, for express authority to reduce the salaries of clerks, see section 3, act of August 15, 1876 (19 Stat. 169).

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eral or lump sum appropriation which exceeds $250,000 in amount, a statement showing in parallel columns:

First, the number of persons, if any, intended to be employed and the rates of compensation to each, and the amounts contemplated to be expended for each of any other objects or classes of expenditures specified or contemplated in the estimate; and

Second, the number of persons, if any, employed and the rates of compensation paid each, and the amounts expended for each other object or class of expenditures out of the appropriation corresponding to the estimate so submitted, during the completed fiscal year next preceding the period for which the estimate is submitted. *Sec. 6, Act of Aug. 24, 1912 (37 Stat. 487).*

97. *Public works.*—Whenever any estimate submitted to Congress by the head of a Department asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess and the extent of the anticipated excess shall be also stated. *Sec. 3663, R. S., as amended by the Act of Feb. 27, 1877 (19 Stat. 249).*

98. *River and harbor works.*—Hereafter the Secretary of War shall annually submit estimates in detail for river and harbor improvements required for the ensuing year to the Secretary of the Treasury to be included in, and carried into, the sum total of the Book of Estimates. *Act of June 4, 1897 (30 Stat. 48).*

99. *Statement of rented buildings.*—It shall be the duty of the heads of the several Executive Departments to submit to Congress each year, in the annual estimates of appropriations, a statement of the number of buildings rented by their respective Departments, the purposes for which rented, and the annual rental of each. *Act of Mar. 3, 1883 (22 Stat. 552).*

100. *Statement of proceeds of sales.*—A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law shall be included in the appendix to the Book of Estimates. *Sec. 3672, R. S., as amended by Act of Feb. 27, 1877 (19 Stat. 249).*

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101. *Same, and other, receipts.*—Hereafter the Secretary of the Treasury shall require, and it shall be the duty of the head of each Executive Department or other Government establishment to furnish him, within thirty days after the close of each fiscal year, a statement of all money arising from proceeds of public property of any kind or from any source other than the postal service, received by said head of Department or other Government establishment during the previous fiscal year for or on account of the public service, or in any other manner in the discharge of his official duties other than as salary or compensation, which was not paid into the General Treasury of the United States, together with a detailed account of all payments, if any, made from such funds during such year. All such statements, together with a similar statement applying to the Treasury Department, shall be transmitted by the Secretary of the Treasury to Congress at the beginning of each regular session. *Sec. 5, Act of June 30, 1906 (34 Stat. 763).*

102. *Report on condition of business.*—It shall be the duty of the head of each Executive Department or other Government establishment in the city of Washington to submit to the first regular session of the Fifty-fourth Congress, and annually thereafter, in the annual Book of Estimates, a statement as to the condition of business in his Department or other Government establishment, showing whether any part of the same is in arrears, and, if so, in what divisions of the respective bureaus and offices of his Department or other Government establishment such arrears exist, the extent thereof, and the reasons therefor, and also a statement of the number and compensation of employees appropriated for in one bureau or office who have been detailed in another bureau or office for a period exceeding one year. *Sec. 7, Act of Mar. 2, 1895 (28 Stat. 808).*

103. *Report of inefficient employees.*—It shall be the duty of the heads of the several Executive Departments of the Government to report to Congress each year, in the annual estimates, the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency. *Sec. 2, Act of July 11, 1890 (26 Stat. 268).*

104. *Time of making.*—Except where a different time is expressly prescribed by law, the various annual reports required to be submitted to Congress by the heads of Departments shall be made at the commencement of each regular session, and shall embrace the transactions of the preceding year. *Sec. 195, R. S.*

105. *Clerks employed.*—The Director of the Census shall edit, index, and publish the Official Register of the United States, and the provisions of existing law imposing that duty upon the Department of the Interior are hereby repealed, and the data to be included in the Official Register, which is now required to be trans-

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mitted to the Secretary of the Interior, shall hereafter be transmitted to the Director of the Census.[1] *Act of June 7, 1906 (34 Stat. 219).*

106. *When furnished printer.*—The head of each Department, except the Department of Justice, shall furnish to the Congressional Printer copies of the documents usually accompanying his annual report, on or before the first day of November in each year, and a copy of his annual report on or before the third Monday of November in each year. *Sec. 196, R. S.*

107. *Exclusion of certain matters.*—The heads of the Executive Departments, before transmitting their annual reports to Congress, the printing of which is chargeable to this appropriation, shall cause the same to be carefully examined, and shall exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports to be necessary and to relate entirely to the transaction of the public business. *Act of Aug. 30, 1890 (26 Stat. 411).*

108. *Condition of business.*—Hereafter it shall be the duty of the head of each Executive Department, or other Government establishment at the seat of Government, not under an Executive Department, to make at the expiration of each quarter of the fiscal year a written report to the President as to the condition of the public business in his Executive Department or Government establishment, and whether any branch thereof is in arrears. *Sec. 7, Act of Mar. 15, 1898 (30 Stat. 317).*

109. *Inventories of property.*—The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney-General, and Commissioner of Agriculture shall keep, in proper books, a complete inventory of all the property belonging to the United States in the buildings, rooms, offices, and grounds occupied by them, respectively, and under their charge, adding thereto, from time to time, an account of such property as may be procured subsequently to the taking of such inventory, as well as an account of the sale or other disposition of any of such property, except supplies of stationery and fuel in the public offices and books, pamphlets, and papers in the Library of Congress. *Sec. 197, R. S., as amended by Act of Feb. 27, 1877 (19 Stat. 241).*

110. *Penalty for failure to make.*—Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time pre-

[1] The Official Register comprises the names of all persons in the service of the United States, exclusive of the Postal Service. It is published once every two years. (See par. 111 post.)

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scribed by such act or regulation, shall be fined not more than one thousand dollars. *Sec. 101, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1107).*

111. *The official register.*—To enable the officer charged with the duty of preparing the Official Register of the United States to publish the same, the Secretary of the Senate, the Clerk of the House of Representatives, the head of each Executive Department of the Government, and the chief of each and every bureau, office, commission, or institution not embraced in an Executive Department, in connection with which salaries are paid from the Treasury of the United States, shall, on the first day of July in each year in which a new Congress is to assemble, cause to be filed with the Secretary of the Interior a full and complete list of all officers, agents, clerks, and other employees of said Department, bureau, office, commission, or institution connected with the legislative, executive, or judicial service of the Government, or paid from the United States Treasury, including military and naval officers of the United States, cadets, and midshipmen.

Said lists shall exhibit the salary, compensation, and emoluments allowed to each of said officers, agents, clerks, and other employees, the State or country in which he was born, the State or Territory and Congressional district and county of which he is a resident and from which he was appointed to office, and where employed.

A list of the names, force, and condition of all ships and vessels belonging to the United States, and when and where built, shall also be filed with the Secretary of the Interior by the heads of the Departments having supervision of such ships and vessels, for incorporation in the Official Register. *Sec. 73, Act of Jan. 12, 1895 (28 Stat. 618).*

112. *Blanks, books, and forms.*—The Public Printer is authorized hereafter to procure and supply, on the requisition of the head of any Executive Department or other Government establishment, complete manifold blanks, books, and forms, required in duplicating processes; also complete patented devices with which to file money-order statements, or other uniform official papers, and to charge such supplies to the allotment for printing and binding of the Department or Government establishment requiring the same. *Act of June 28, 1902 (32 Stat. 481).*

113. *Books and documents—Restrictions.*—Hereafter no book or document not having to do with the ordinary business transactions of the Executive Departments shall be printed on the requisition of any Executive Department or unless the same shall have been expressly authorized by Congress. *Act of Mar. 3, 1905 (33 Stat. 1249).*

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114. *Appropriations chargeable.*—Hereafter, in the printing and binding of documents or reports emanating from the Executive Departments, bureaus, and independent offices of the Government, the cost of which is now charged to the allotment for printing and binding for Congress, or to appropriations or allotments of appropriations other than those made to the Executive Departments, bureaus, or independent offices of the Government, the cost of illustrations, composition, stereotyping, and other work involved in the actual preparation for printing, apart from the creation of manuscript, shall be charged to the appropriation or allotment of appropriation for the printing and binding of the Department, bureau, or independent office of the Government in which such documents or reports originate; the balance of cost shall be charged to the allotment for printing and binding for Congress, and to the appropriation or allotment of appropriation of the Executive Department, bureau, or independent office of the Government, in proportion to the number delivered to each; the cost of any copies of such documents or reports distributed otherwise than through Congress, or the Executive Departments, bureaus, and independent offices of the Government, if such there be, shall be charged as heretofore: *Provided*, That on or before the first day of December in each fiscal year each Executive Department, bureau, or independent office of the Government to which an appropriation or allotment of appropriation for printing and binding is made, shall obtain from the Public Printer an estimate of the probable cost of all publications of such Department, bureau, or independent office now required by law to be printed, and so much thereof as would, under the terms of this resolution, be charged to the appropriation or allotment of appropriation of the Department, bureau, or independent office of the Government in which such publications originate, shall thereupon be set aside to be applied only to the printing and binding of such documents and reports, and shall not be available for any other purpose until all of such allotment of cost on account of such documents and reports shall have been fully paid. *Joint Res. No. 13, of Mar. 30, 1906 (34 Stat. 825).*

115. *Same.*—No other fund appropriated by this Act, or any other Act, shall be used for services or other purposes in the Government Printing Office, or in the office of the superintendent of documents, of the character specified in the foregoing paragraphs, except in cases of emergency arising after the passage of this Act, and then only on the written order of the Public Printer; and the aggregate of all salaries or other expenses thus paid, in addition to those specifically appropriated for above, shall be reported to Congress

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each year in connection with the annual estimates. *Act of Mar. 4, 1909 (35 Stat. 1021).*

116. *Illustrations.*—Hereafter no part of the appropriations made for printing and binding shall be used for any illustration, engraving, or photograph in any document or report ordered printed by Congress unless the order to print expressly authorizes the same, nor in any document or report of any executive department or other Government establishment until the head of the executive department or Government establishment shall certify in a letter transmitting such report that the illustration is necessary and relates entirely to the transaction of public business. *Sec. 1, Act of Mar. 3, 1905 (33 Stat. 1213).*

117. *Number of copies—Two or more editions.*—The number of copies of any public document or report now authorized to be printed or which may hereafter be authorized to be printed for any of the Executive Departments, or bureaus or branches thereof, or independent offices of the Government may be supplied in two or more editions, instead of one, upon a requisition on the Public Printer by the official head of such Department or independent office, but in no case shall the aggregate of said editions exceed the number of copies now authorized, or which may hereafter be authorized. *Joint Res. No. 14, of Mar. 30, 1906 (34 Stat. 826).*

118. *Rented buildings in District of Columbia.*—Hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the Government, to be used for the purposes of the Government, until an appropriation therefor shall have been made in terms by Congress. *Act of June 22, 1874 (18 Stat. 144).*

119. *Future leases in District of Columbia.*—Hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building. *Act of March 3, 1877 (19 Stat. 370).*

120. *Same—Renting other buildings.*—Where buildings are rented for public use in the District of Columbia, the Executive Departments are authorized, whenever it shall be advantageous to the public interest, to rent others in their stead: *Provided*, That no increase in the number of buildings now in use, nor in the amounts paid for rents, shall result therefrom. *Act of Aug. 5, 1882 (22 Stat. 241).*

121. *Recording clocks prohibited.*—No money appropriated by this act shall be used for expense of repairing recording clocks used for recording time of clerks or other employees in any of the Executive Departments at Washington, nor shall there thereafter be used in

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any of the Executive Departments at Washington any such recording clocks. *Act of Feb. 24, 1899 (30 Stat. 864).*

122. *Draping public buildings.*—Hereafter no building owned, or used for public purposes, by the Government of the United States, shall be draped in mourning and no part of the public fund shall be used for such purposes. *Sec. 3, Act of Mar. 3, 1893 (27 Stat. 715).*

123. *Closing Departments on death of ex-official.*—Hereafter the Executive Departments of the Government shall not be closed as a mark to the memory of any deceased ex-official of the United States. *Sec. 4, Act of Mar. 3, 1893 (27 Stat. 715).*

124. *Books, etc., of disbursing officers accessible to accounting officers.*—All books, papers, and other matters relating to the office or accounts of disbursing officers of the Executive Departments, and commissions, boards, and establishments of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials.[1] *Act of Feb. 19, 1897 (29 Stat. 550).*

125. *Department libraries depositories of public documents.*—The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications in the same form as supplied to other depositories to each of said libraries. *Sec. 98, Act of Jan. 12, 1895 (28 Stat. 624).*

126. *Postage stamps for official use.*—The Secretaries, respectively, of the Departments of State, of the Treasury, War, Navy, and of the Interior, and the Attorney-General, are authorized to make requisitions upon the Postmaster-General for the necessary amount of official postage stamps for the use of their Departments, not exceeding the amount stated in the estimates submitted to Congress; and upon presentation of proper vouchers therefor at the Treasury, the amount thereof shall be credited to the appropriation for the service of the Post-Office Department for the same fiscal year. *Sec. 2, Act of Mar. 3, 1883 (22 Stat. 563).*

127. *Telegraph connecting Capitol with executive departments.*—The lines of telegraph, connecting the Capitol with the various Departments in Washington, constructed under and by virtue of the act of Congress approved March third, eighteen hundred and seventy-three, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," be, and

[1] Act of Mar. 15, 1898, 30 Stat. 316, is to the same effect.

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the same are hereby, placed under the supervision of the officer in charge of the public buildings and grounds; and that the said officer be authorized and empowered to make rules and regulations for the working of said lines. And the Secretary or head of each Executive Department, and the Congressional Printer, are hereby authorized to detail one person from their present force of employees to operate the instruments in said Departments and Printing Office, and each House of Congress may provide for the employment of an operator in their respective wings of the Capitol, at a compensation not exceeding one hundred dollars per month, during the sessions of Congress. *Act of Feb. 4, 1874 (18 Stat. 14).*

128. *Same—Restrictions.*—Said lines of telegraph shall be for the use only of Senators, Members of Congress, Judges of the United States courts, and officers of Congress and of the Executive Departments, and solely on public business. *Act of Mar. 7, 1874 (18 Stat. 20).*

129. *Destroying, etc., public records.*—Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take or carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both. *Sec. 128, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1111).*

130. *Same—By custodian.*—Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States. *Sec. 129, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1112).*

131. *Forging, etc., public records.*—Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter

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or publish as true, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both. *Sec. 28, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1094).*

132. *Report to Congress—Sale.*—Whenever there shall be in any one of the Executive Departments of the Government an accumulation of files of papers, which are not needed or useful in the transaction of the current business of such Department and have no permanent value or historical interest, it shall be the duty of the head of such Department to submit to Congress a report of that fact, accompanied by a concise statement of the condition and character of such papers. And upon the submission of such report, it shall be the duty of the presiding officer of the Senate to appoint two Senators, and of the Speaker of the House of Representatives to appoint two Representatives, and the Senators and Representatives so appointed shall constitute a joint committee, to which shall be referred such report, with the accompanying statement of the condition and character of such papers, and such joint committee shall meet and examine such report and statement and the papers therein described, and submit to the Senate and House, respectively, a report of such examination and their recommendation. And if they report that such files of papers or any part thereof are not needed or useful in the transaction of the current business of such Department, and have no permanent value or historical interest, then it shall be the duty of such head of the Department to sell as waste paper, or otherwise dispose of such files of papers upon the best obtainable terms after due publication of notice inviting proposals therefor, and receive and pay the proceeds thereof into the Treasury of the United States, and make report thereof to Congress. *Act of Feb. 16, 1889 (25 Stat. 672).*

133. *Same.*—The act entitled "An act to authorize and provide for the disposition of useless papers in the Executive Departments," approved February sixteenth, eighteen hundred and eighty-nine, is hereby amended so as to include in its provisions any accumulation of files of papers of a like character therein described now or hereafter in the various public buildings under the control of the several

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Executive Departments of the Government. *Act of Mar. 2, 1895 (28 Stat. 933).*

134. *Subpœnas—Depositions.*—Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpœna for a witness being within the jurisdiction of such court, to appear at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim. *Sec. 184, R. S.*

135. *Witness fees.*—Witnesses subpœnaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States. *Sec. 185, R. S.*

136. *Compelling testimony.*—If any witness, after being duly served with such subpœna, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpœna issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpœna ad testificandum issued by such court. *Sec. 186, R. S.*

137. *Professional assistance.*—Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpœna to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service. *Sec. 187, R. S.*

138. *Employment of legal services.*—No head of a Department shall employ attorneys or counsel at the expense of the United States, but shall, when in need of counsel or advice, call upon the Department of Justice, the officers of which shall attend to the same. *Sec. 189, R. S.*

139. *Evidence furnished to Court of Claims.*—In all suits brought against the United States in the Court of Claims founded upon any contract, agreement, or transaction with any Department, or any Bureau, officer, or agent of a Department, or where the matter or thing on which the claim is based has been passed upon and decided by any Department, Bureau, or officer authorized to adjust

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it, the Attorney-General shall transmit to such Department, Bureau, or officer, a printed copy of the petition filed by the claimant, with a request that the Department, Bureau, or officer, shall furnish to the Attorney-General all facts, circumstances, and evidence touching the claim in the possession or knowledge of the Department, Bureau, or officer. Such Department, Bureau, or officer shall, without delay, and within a reasonable time, furnish the Attorney-General with a full statement, in writing, of all such facts, information, and proofs. The statement shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured. If the claim has been passed upon and decided by the Department, Bureau, or officer, the statement shall succinctly state the reasons and principles upon which such decision was based. In all cases where such decision was founded upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically; and if any previous interpretation or construction has been given to such act, section, or clause by the Department, Bureau, or officer, the same shall be set forth succinctly in the statement, and a copy of the opinion filed, if any, shall be annexed to it. Where any decision in the case has been based upon any regulation of a Department, or where such regulation has, in the opinion of the Department, Bureau, or officer transmitting such statement, any bearing upon the claim in suit, the same shall be distinctly quoted at length in the statement. But where more than one case, or a class of cases, is pending, the defense to which rests upon the same facts, circumstances, and proofs, the Department, Bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such cases, as if made out, certified, and transmitted in each case respectively. *Sec. 188, R. S.*

140. *Prosecution of claims by ex-employees.*—It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee. *Sec. 190, R. S.*

(See XVIII Opin. Att. Gen., 125, 136; XIX id., 328; XX id., 657.)

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CHAPTER III.

THE DEPARTMENT OF WAR.

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141. *Secretary of War—Department of War.*—There shall be at the seat of Government an Executive Department to be known as the Department of War, and a Secretary of War, who shall be the head thereof.[1] *Sec. 214, R. S.*

142. *Assistant Secretary of War.*—There shall be in the Department of War an Assistant Secretary of War, who shall be appointed by the President, by and with the advice and consent of the Senate,

[1] The Department of War and the office of Secretary of War were created by the act of August 7, 1789 (1 Stat. 49). The powers and duties of the Secretary of War were defined in an ordinance of Congress dated January 27, 1785 (1 Stat. 49, note *b*). The office of Secretary of War included that of Secretary of the Navy until April 30, 1798, when the Department of the Navy was established, and so much of the act of August 7, 1789, as imposed duties upon the Secretary of War in connection therewith was repealed (1 Stat. 553). For statutory provisions respecting a temporary vacancy in the office of Secretary of War see paragraphs 13 to 18, ante.

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and shall be entitled to a salary of four thousand five hundred dollars a year, payable monthly, and who shall perform such duties in the Department of War as shall be prescribed by the Secretary or may be required by law.[1] *Act of Mar. 5, 1890 (26 Stat. 17).*

143. *Absence or illness of Secretary of War.*—The President may authorize and direct the Commanding General of the Army or the chief of any military bureau of the War Department to perform the duties of the Secretary of War under the provisions of section one hundred and seventy-nine of the Revised Statutes, and section twelve hundred and twenty-two of the Revised Statutes shall not be held or taken to apply to the officer so designated by reason of his temporarily performing such duties. *Act of Aug. 5, 1882 (22 Stat. 238).*

144. *Assistant and chief clerk.*—There shall be in the said Department an inferior officer, to be appointed by said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk in the Department of War, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to the said Department. *Act of Feb. 27, 1877 (19 Stat. 241), amending Sec. 215, R. S.*

(Now assistant and chief clerk. Act of May 22, 1908 (35 Stat. 213).)

145. *Temporary absence of Secretary of War.*—When, from illness or other cause, the Secretary of War is temporarily absent from the War Department, he may authorize the chief clerk of the Department to sign requisitions upon the Treasury Department, and other papers requiring the signature of said Secretary; the same, when signed by the chief clerk during such temporary absence, to be of the same force and effect as if signed by the Secretary of War himself. *Act of Mar. 4, 1874 (18 Stat. 19).*

(For the general duties of chief clerks see Chapter II, ante.)

146. *Absence of bureau chief.*—During the absence of the Quartermaster-General, or the chief of any military bureau of the War Department, the President is authorized to empower some officer of the department or corps whose chief is absent to take charge thereof, and to perform the duties of Quartermaster-General, or chief of department or corps, as the case may be, during such ab-

[1] The act of August 5, 1882 (22 Stat. 237), authorizing the appointment of an Assistant Secretary of War was repealed by the act of July 7, 1884 (23 Stat. 179), the power conferred by the act of August 5, 1882, never having been exercised. In the case of Ryan *v.* U. S., 136 U. S., 18, 80, it was held that the authority vested in the Secretary of War could in his absence be exercised by the officer who under the law became for the time Acting Secretary of War. The salary of the Assistant Secretary of War was increased to $5,000 by act of May 22, 1908 (35 Stat. 213).

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sence.[1] *Sec. 1132, R. S., as amended by the Act of Feb. 25, 1877 (19 Stat. 242).*

147. *Duties of the Secretary of War.*—The Secretary of War shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to military commissions, the military forces, the warlike stores of the United States, or to other matters respecting military affairs; and he shall conduct the business of the Department in such manner as the President shall direct.[2] Sec. 216, R. S. (*see secs. 3660–3665, 3669, R. S.*).

148. *Secretary of War custodian of department property, etc.*—The Secretary of War shall have the custody and charge of all the books, records, papers, furniture, fixtures, and other property appertaining to the Department. *Sec. 217, R. S.*

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[1] This section contains the substance of section 5 of the act of July 4, 1836 (5 Stat. 117), which was passed in order to enable Q. M. Gen. Thos. S. Jesup to exercise command of the troops engaged in the prosecution of the Florida war. General Jesup served under this assignment from May 19, 1836, to July 7, 1838, when he resumed the performance of his duties as Quartermaster-General in the War Department.

[2] The Secretary of War is the regular constitutional organ of the President for the administration of the Military Establishment of the Nation; and rules and orders publicly promulgated through him must be received as the acts of the Executive and, as such, be binding upon all within the sphere of his legal and constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise or mistaken. The right of so considering and treating the authority of the Executive, vested as it is with the command of the military and naval forces, could not be intrusted to officers of any grade inferior to the Commander in Chief; its consequence, if tolerated, would be a complete disorganization of both the Army and Navy. (U. S. *v.* Eliason, 16 Pet., 291, 302; Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755; Runkle *v.* U. S., 122 U. S., 543, 557; U. S. *v.* Adams, 7 Wall., 463.) The Secretary of War is not required to perform duties in the field. He does not compose any part of the Army, and has no service to perform that may not be done at the seat of government. (I Opin. Att. Gen., 457; U. S. *v.* Burns, 12 Wall., 246; see also note 2 to par. 5, and the title Bridges over the navigable waters of the United States, in the chapter entitled "The Corps of Engineers.")

Duties imposed by statute.—In addition to his duties as the constitutional organ of the President for the administration of the Military Establishment, the Secretary of War is, by other statutes, charged with the supervision of the administration of the several bureaus or offices of the War Department, their estimates, contracts, expenditures, reports, and returns being under his sole direction and control. He has also been charged, from time to time, with the execution of laws relating to national cemeteries, the Soldiers' Home, the National Home for Disabled Volunteer Soldiers, the military prison, the detail of officers to colleges, the distribution of relief to sufferers by fire, flood, or by the failure of crops, due to drought or other causes, the construction and operation of canals, roads, and lines of telegraph, the location and construction of bridges over the navigable waters of the United States, of railroads through the public lands, the protection of settlers and emigrants, the establishment of harbor lines, the adjustment of claims, the establishment and maintenance of national military parks, and the location, marking, and preservation of lines of battle on the battlefields of the Civil War. Since the act of June 28, 1864, all statutes authorizing the construction of works of river and harbor improvement have contained the provision that the sums appropriated shall be expended under his direction. The Military Academy and the schools of application at Willets Point, Fortress Monroe, and at Forts Leavenworth and Riley are also carried on under the immediate supervision of the Secretary of War. By the act of April 10, 1878, the Secretary of War is authorized to prescribe rules and regulations to be observed in the preparation, submission, and opening of bids for contracts under the War Department.

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149. *Secretary of War to cause colors, etc., to be collected.*—The Secretary of War shall from time to time cause to be collected and transmitted to him, at the seat of government, all such flags, standards, and colors as are taken by the Army from the enemies of the United States. *Sec. 218, R. S.*

150. *Transports not to be sold without consent of Congress.*—No steamship in the transport service of the United States shall be sold or disposed of without the consent of Congress having been first had or obtained. *Act of Mar. 2, 1903 (32 Stat. 938).*

151. *Transport service not to be discontinued without action of Congress.*—No action looking to the discontinuance of the transport service shall be taken without further action of Congress. *Id.*

152. *United States vessels to be preferred in transporting supplies, etc.*—Vessels of the United States, or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, provisions, fodder, or supplies of any description, purchased pursuant to law, for the use of the Army or Navy unless the President shall find that the rates of freight charges by said vessels are excessive and unreasonable, in which case contracts shall be made under the law as it now exists: *Provided*, That no greater charges be made by such vessels for transportation of articles for the use of the said Army and Navy than are made by such vessels for transportation of like goods for private parties or companies. *Act of Apr. 28, 1904 (33 Stat. 518).*

153. *Detail of employees to administer oaths.*—The Secretary of War is authorized to detail one or more of the employees of the War Department for the purpose of administering the oaths required by law in the settlement of officers' accounts for clothing, camp and garrison equipage, quartermaster's stores, and ordnance, which oaths shall be administered without expense to the parties taking them. *Sec. 225, R. S.*

154. *Superintendent of State, War, and Navy building.*—The President is hereby authorized and directed to designate from the Engineer Corps of the Army or the Navy, an officer well qualified for the purpose, who shall be detailed to act as superintendent of the completed portions of the State, War, and Navy Department building, under direction of the Secretaries of State, War, and Navy, who are hereby constituted a commission for the purposes of the care and supervision of said building, as hereinafter specified. Said officer shall have charge of said building, and all the engines, machinery, steam and water supply, heating, lighting, and ventilating apparatus, elevators, and all other fixtures in said building, and all necessary repairs and alterations thereof, as well as the direction and control of such force of engineers, watchmen, laborers, and

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others engaged about the building or the apparatus under his supervision; of the cleaning of the corridors and water closets; of the approaches, side-walks, lawns, court-yards, and areas of the building, and of all rooms in the sub-basement which contain the boilers and other machinery, or so much of said rooms as may be indispensable to the proper performance of his duties as herein provided.[1] *Act of Mar. 3, 1883* (*22 Stat. 553*).

155. *Bureau of Insular Affairs.*—The Division of Insular Affairs of the War Department, organized by the Secretary of War, is hereby continued until otherwise provided, and shall hereafter be known as the Bureau of Insular Affairs of the War Department. The business assigned to said Bureau shall embrace all matters pertaining to civil government in the island possessions of the United States subject to the jurisdiction of the War Department; and the Secretary of War is hereby authorized to detail an officer of the Army whom he may consider especially well qualified, to act under the authority of the Secretary of War as the chief of said Bureau; and said officer while acting under said detail shall have the rank, pay, and allowances of a colonel. *Sec. 87, Act of July 1, 1902* (*32 Stat. 712*).

156. *Chief of Bureau of Insular Affairs to rank as brigadier general.*—The Chief of the Bureau of Insular Affairs of the War Department shall hereafter be appointed by the President for the period of four years, unless sooner relieved, with the advice and consent of the Senate, and while holding that office he shall have the rank, pay, and allowances of a brigadier general. *Act of June 25, 1906* (*34 Stat. 456*).

157. *Assistant, Bureau of Insular Affairs.*—The Secretary of War is hereby authorized to detail an officer of the Army, whom he may consider especially well qualified, to act as principal assistant to the Chief of the Bureau of Insular Affairs of the War Department, and said principal assistant while acting under said detail shall have the rank, pay, and allowances of a major. *Act of Mar. 2, 1907* (*34 Stat. 1162*).

158. *Same.*—The provisions of section twenty-seven of the Act of February second, nineteen hundred and one, with reference to the transfer of officers of the line to the departments of the staff for tours of service, shall apply to the vacancy created by this Act and to the return of the officer so detailed to the line of the Army. *Id.*

159. *Same.*—The Secretary of War is hereby authorized to detail one additional officer of the army as assistant to the Chief of the

[1] The Mills Building and the Navy Department Annex are also under the charge of the Superintendent of the State, War, and Navy building. (Act of May 22, 1908, 35 Stat. 218.)

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Bureau of Insular Affairs, under the same provisions of law in regard to the vacancy in the line thus created and return to the line as govern in the case of the assistant authorized by the Act of March second, nineteen hundred and seven; and the assistant herein authorized while serving in this capacity shall have the rank, pay, and allowances of colonel; and both officers detailed in the Bureau of Insular Affairs shall hereafter be designated, while on this duty, as assistants to the chief of the bureau. *Act of Mar. 23, 1910 (36 Stat. 248).*

160. *Secretary of War authorized to deliver obsolete cannon to Volunteer and State Homes.*—The Secretary of War * * * is authorized and directed, subject to such regulations as he may prescribe, to deliver to any of the "National Homes for Disabled Volunteer Soldiers" already established or hereafter established and to any of the State Homes for soldiers and sailors or either now or hereafter duly established and maintained under State authority, such obsolete serviceable cannon, bronze or iron, suitable for firing salutes, as may be on hand undisposed of, not exceeding two to any one Home. *Act of Feb. 8, 1889 (25 Stat. 657).*

161. *No additional compensation.*—Hereafter it shall be unlawful to allow or pay to any of the persons designated in this act any additional compensation from any source whatever, or to retain, detail, or employ in any branch of the War Department in the city of Washington any persons other than those herein authorized,[1] except in the Signal Offices and the Engineer Corps, and except such commissioned officers as the Secretary of War may, from time to time, assign to special duties. *Act of June 20, 1874 (18 Stat. 101).*

162. *Secretary of War to determine and adjust claims for damages due to heavy gun fire, target practice, etc., in connection with maneuvers.*—That hereafter the Secretary of War is authorized to consider, ascertain, adjust, and determine the amounts due on all claims for damages to and loss of private property when the amount of the claim does not exceed the sum of one thousand dollars, occasioned by heavy gun fire and target practice of troops, and for damages to vessels, wharves, and other private property, found to be due to maneuvers or other military operations for which the Government is responsible, and report the amounts so ascertained and determined to be due the claimants to Congress at each session thereof through the Treasury Department for payment as legal claims out of appropriations that may be made by Congress therefor. *Act of Aug. 24, 1912 (37 Stat. 586).*

[1] The act specifies the number of clerks who may be employed in the War Department. Since 1874 the number of clerks has been changed by legislation, but the general rule set forth above would appear to be still in force.

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CHAPTER IV.

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

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163. *President to establish civil service regulation.*—The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of the service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.[1] *Sec. 1753, R. S.*

[1] Neither section 1753, Revised Statutes, nor the civil service act of January 16, 1883 (22 Stat. 403), puts any restrictions upon the power of removal from appointive offices except for refusal to contribute to political funds or neglect to render political service; hence Presidential Rule II, relating to the civil service and providing (as amended July 27, 1897), that no removal shall be made without giving the accused notice and an opportunity to make defense, has no such authority at law as confers upon the holder of an office a vested right thereto, with the right to invoke the equitable power of the courts to restrain his removal therefrom in violation of such rule. (Page et al. *v.* Moffett, 85 Fed. Rep., 38. See, also, as to the equitable jurisdiction of the Federal courts, In re Sawyer, 124 U. S., 200, and World's Columbian Exp. *v.* U. S., 18 U. S. App., 159, 6 Circ. Ct. App., 71, 56 Fed. Rep., 667; Butler *v.* White, 83 id., 578; Carr *v.* Gordon, 82 id., 373.)

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164. *Appointments to civil office; preferences.*—Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty shall be preferred for appointments to civil service offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices. *Sec. 1754, R. S.*

165. *Recommendation of military persons for private employment.*—In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments. *Sec. 1755, R. S.*

166. *Examination for the civil service.*—After the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferrd by the seventeen hundred and fifty-fourth section of the Revised Statutes[1] nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination. *Sec. 7, Act of Jan. 16, 1883 (22 Stat. 406).*

167. *Salaries.*—No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law. *Sec. 1760, R. S.*

168. *Same.*—No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate. *Sec. 1761, R. S.*

[1 Paragraphs 163 and 164 ante.]

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169. *Persons drawing $2,500 yearly compensation not to hold second office.*—No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate.[1] *Sec. 2, act of July 31, 1894 (28 Stat. 205).*

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[1] The traditions and usages of the United States recognize the policy and propriety of employing, when necessary, the same person at the same time in two distinct capacities. Not to mention other familiar cases, there are the prominent examples of the diplomatic mission of Mr. Jay to England, under President Washington, while he was still Chief Justice of the United States; of the mission of Mr. Gallatin to London and St. Petersburg, to negotiate a peace, while Secretary of the Treasury under President Madison; and of Mr. Justice Nelson, sitting as a member of the commission which concluded the treaty of Washington, under President Grant. On the other hand, it is the undoubted aim of general legislation respecting salaries to gauge the work so as to give full employment to the capacities of the man likely to be appointed to do it, and to measure the pay according to the work. In construing statutes restraining the Executive from giving dual or extra compensation, courts have aimed to carry out the legislative intent by giving them sufficient flexibility not to injure the public service and sufficient rigidity to prevent Executive abuse. (Landram *v.* U. S., 16 Ct. Cls., 74, 82.) The great object has been to establish by law the compensation for public services, whether in offices or agencies, where the nature and character of the duties to be performed were sufficiently known and definite to enable Congress to form an estimate of its value and not leave it to the discretion of the head of an Executive Department. * * * These sections "can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character and for a different place and the amount of compensation is regulated by law. * * * The just and fair inference from these acts of Congress taken together is that no discretion is left to the head of a Department to allow an officer, who has a fixed compensation, any credit beyond his salary, unless the service he has performed is required by existing laws and the remuneration for them is fixed by law." (Converse *v.* U. S., 21 How., 463, 470, 473; U. S. *v.* Brindle, 110 U. S., 688, 694; U. S. *v.* Shoemaker, 7 Wall., 338; Meigs *v.* U. S., 19 Ct. Cls., 497; XV Opin. Att. Gen., 608; 1 Comp. Dec., 286; 2 id., 33; Crosthwaite *v.* U. S., 30 Ct. Cls., 300.)

A question having arisen as to the payment of a per diem to the members and certain employees of the Bering Sea Tribunal of Arbitration, it was held: As to Justice Harlan and Senator Morgan, that the terms of section 1763 of the Revised Statutes, as amended by the act of July 31, 1894 (28 Stat. 205), did not apply, as they had been appointed to separate and distinct offices not incompatible with the offices of justice of the Supreme Court, Senator of the United States, and retired judge. Payments to them were therefore allowed. (U. S. *v.* Saunders, 120 U. S., 126.) As to Senator Morgan, it was held that membership of a tribunal of arbitration did not constitute the holding of office under the authority of the United States under Article I, section 6, of the Constitution, and that Senator Morgan was not thereby prohibited from sitting thereon. The payment of per diem allowances to clerks and other regular employees of the United States, who had been detailed from the several Executive Departments to assist the tribunal in its labors, was held to be unauthorized under section 1765 of the Revised Statutes *Held*, under this section, that a major and paymaster of the Army detailed as disbursing officer of the Bering Sea Tribunal of Arbitration at Paris, could not receive any other allowances or emoluments than

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170. *No extra allowances for disbursing money, etc.*—No officer[1] in any branch of the public service, or any other person whose salary, pay,[2] or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.[3] *Sec. 1765, R. S.*

171. *False entry by officer or agent.*—Whoever, being an officer, clerk, agent, or other person holding any office or employment under the Government of the United States and, being charged with the duty of keeping accounts or records of any kind, shall, with intent to deceive, mislead, injure, or defraud the United States or any person, make in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties, or whoever with like intent shall aid or abet any such officer, clerk, agent, or other person in so doing; or whoever, being an officer, clerk, agent, or other person holding any office or employment under the Government of the United States and, being charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, shall, with like intent, make a false report of such moneys or securities, or whoever with like intent shall aid or abet any such officer, clerk, agent, or other person in so doing, shall be fined not more than five

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those specified in this section as allowance to officers of the Army. (Comp. Dec., 1893–94, 275.)

A compensation for extra services, where no certain allowance is fixed by law, can not be paid by the head of a Department to any officer of the Government who has, by law, a certain compensation in the office he holds. (X Opin. Att. Gen., 31.) The various provisions of law forbidding extra allowance or additional pay for extra service imply extra-service pay or allowance in the same office, not distinct service in distinct offices. (VIII Opin. Att. Gen., 325.) Where the service is one required by law, but not of any particular official, and compensation therefor is fixed by competent authority, and is appropriated, any officer who, under due authorization, performs the service is entitled to the compensation. (XV Opin. Att. Gen., 608. See also Converse, admr., *v.* U. S., 21 How., 463; U. S. *v.* Shoemaker, 7 Wall., 338; Stansbury *v.* U. S., 8 Wall., 33; XIX Opin. Att. Gen., 121.) But see for exception, section 7, act of June 3, 1896 (29 Stat. 235.)

[1] An officer is one who is invested with an office, and an office is authority, granted by law, to exercise a function of Government. An employee is one who is employed under a contract to perform personal service. An office is distinguished from a public employment by the fact that in the one case the authority to perform a public service is derived from the law, while in the other it is derived from a contract. IV Comp. Dec., 696.

[2] Salary is fixed when it is at a stipulated rate for a definite period of time; pay or emolument is fixed when the amount is agreed upon and the service is defined. Hedrick *v.* U. S., 16 Ct. Cls., 88.

[3] The provisions of section 1765, Revised Statutes, which prohibit the payment of additional compensation, apply to two classes of persons only, viz, officers in the public service and employees whose compensation is fixed by law or regulations. IV Comp. Dec., 696. See, also, id., 424.

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thousand dollars, or imprisoned not more than ten years, or both. *Act of Mar. 4, 1911 (36 Stat., 1355).*

172. *Officer, etc., not to solicit or receive political contributions.*—No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. *Sec. 118, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1110).*

173. *Same.*—No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section, or in any navy-yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever. *Sec. 119, id.*

174. *Same.*—No officer or employee of the United States mentioned in section one hundred and eighteen, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. *Sec. 120, id.*

175. *Same.*—No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. *Sec. 121, id.*

176. *Same; Penalty.*—Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both. *Sec. 122, id.*

177. *No officer or clerk to solicit for gift to superior.*—No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or em-

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ployees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily dismissed from the Government employ.[1] *Sec. 1784, R. S.*

[1] This section was held to be constitutional by the Supreme Court in Ex parte Curtis, 106 U. S., 371.

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CHAPTER V.

THE TREASURY DEPARTMENT—THE ACCOUNTING OFFICERS.

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178. *Treasurer of the United States.*—There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, * * *. *Sec. 301, R. S.*

179. *Same—Duties of.*—The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. He shall render his accounts to the [Auditor for the Treasury Department] quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the Comptroller, or either of them, the inspection of the moneys in his hands. *Sec. 305, R. S., as amended by Sec. 11, Act of July 31, 1894 (28 Stat. 209).*

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180. *Assistant treasurers.*—There shall be assistant treasurers of the United States, appointed from time to time by the President, by and with the advice and consent of the Senate, to serve for the term of four years, as follows:

One at Boston.
One at New York.
One at Philadelphia.
One at Baltimore.
One at New Orleans.
One at Saint Louis.
One at San Francisco.
One at Cincinnati.
One at Chicago.

Sec. 3595, R. S.

181. *Mints—Certain mints to be depositories, and certain superintendents to be assistant treasurers.*—The mints at Carson City, and at Denver, and the assay office at Boisé City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct. *Sec. 3592, R. S.*

The superintendent of the mint at Carson City, and the superintendent of the assay office at Boisé City, shall be assistant treasurers of the United States, and shall respectively have the custody and care of all public moneys deposited therein, and shall perform all the duties required of them in reference to the receipt, safe-keeping, transfer, and disbursement of all such moneys, as provided by law. *Secs. 3592, 3594, R. S.*

182. *Depositories designated by Secretary of Treasury.*—All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary, but receipts derived from duties on imports in Alaska, the Hawaiian Islands, and other islands under the jurisdiction of the United States may be deposited in such depositaries subject to such regulations; and such depositaries may also be employed as financial agents of the Government; and they shall perform all such reasonable duties as depositaries of public moneys and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid

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into the Government for internal revenue or for loans or stocks. *Sec. 5153, R. S., as amended by Act of Mar. 3, 1901 (31 Stat. 1448).*

The Secretary of the Treasury is hereby authorized to designate one or more banks or bankers in the Philippine Islands and in the islands of Cuba and Porto Rico in which public moneys may be deposited: *Provided*, That the banks or bankers thus designated shall give satisfactory security for the safe-keeping and prompt payment of the public moneys so deposited by depositing in the Treasury United States bonds to an amount not less than the aggregate sum at any time on deposit with such banks or bankers: *And provided further*, That this act shall apply to Cuba only while occupied by the United States. *Act of June 6, 1900 (31 Stat. 658).*

183. *Annual reports of Treasurer, etc., as to balances of disbursing officers accounts remaining unchanged for three years.*—The Treasurer, each assistant treasurer, and each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified,[1] on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and which may then have been outstanding and unpaid for three years and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee. *Sec. 310, R. S.*

184. *Deposit and safe-keeping of public funds.*—In places * * * where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. *Sec. 3620, R. S.*

185. *Duties of fiscal agents.*—The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever

[1] See par. 244, post.

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character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, Commissary-General, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. *Sec. 3639, R. S.; see also secs. 5489–5497, R. S.*

186. *Constitutional provision.*—No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. *Art. I, Sec. 9, clause 7 of the Constitution of the United States.*

187. *Application.*—All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.[1] *Sec. 3678, R. S.*

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[1] An appropriation by Congress of a given sum of money for a named purpose is not the designation of a specific fund for that purpose, but simply a legal authority to apply so much of any money in the Treasury to the indicated object. Every appropriation for the payment of a particular demand, or a class of demands, necessarily involves and includes the recognition by Congress of the legality and justice of each demand and is equivalent to an express mandate to the Treasury officers to pay it. This recognition is not affected by any previous adverse action of Congress, for the last expression by that body supersedes all such previous action. (Hukill *v.* U. S., 16 Ct. Cls., 562, 585.) When an appropriation has been made by Congress for a general purpose, contemplating a multitude of acts to be done by the Department, its agency is general within those limits. (Leavitt *v.* U. S., 34 Fed. Rep., 623.) When an alleged liability of the Government rests wholly upon an appropriation, they must stand or fall together, so that when the latter is exhausted the former comes to an end. (Shipman *v.* U. S., 18 Ct. Cls., 138.)

The disposition of public money is in the discretion of Congress, and its reasons for passing an act of appropriation and the consideration thereof can not be inquired into nor its will thwarted by any executive officers or by the courts. (Mumford *v.* U. S., 31 Ct. Cls., 210, 215; Jordan *v.* U. S., 19; Id., 108; 113 U. S., 418.) In view of the requirements of this section a disbursing officer is not authorized to use public moneys advanced to him from one appropriation in the payment of liabilities arising under another appropriation. (IV Comp. Dec., 569.)

Administrative discretion in expenditures.—Ordinarily, where discretionary power is lodged in a judicial officer, his decision is not reviewable save by the

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188. *Expenditures not to exceed appropriations.*—No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropria-

court of which he is a member, and then only when there has been a clear abuse of the discretion committed to him. Far more cogent reasons exist why this rule should be applied to administrative officers, who are empowered to use their discretion as to the manner in which public moneys shall be expended, for great embarrassment and confusion might result if officers in one Executive Department could sit in judgment upon the decisions of the officers of another Executive Department in cases involving the exercise of judgment and discretion. (III Comp. Dec., 21.) Wherever the exercise of discretion by the War Department in disbursing moneys appropriated for the support of the Army is permitted by a statute, the manner in which such discretion has been exercised is a matter of administration with which the accounting officers have no concern. It is the province of the military authorities to determine the needs of a given military depot or post and the quantity of a specified article to be allotted to said depot or post, while it is the province of the accounting officers to determine whether or not Congress has made an appropriation covering a specific expenditure, or whether or not such expenditure was made in conformity with law. (Id., 21.) The degree of wisdom displayed in the exercise of the discretion given an officer of the Army, under the authority of the Secretary of War, is not a subject for review by the accounting officers. If the officer is responsible for his action in the premises to anyone, it is to the source from which he derived his authority. (Id., 22.)

The evidence required by the War Department from the disbursing officers and agents of the Army for administrative purposes is a matter peculiarly within the jurisdiction of the Secretary of War. (Id., 497.)

When Congress makes an appropriation for a particular object, that appropriation is exclusive, and another appropriation which but for the specific appropriation might be available can not be used. (Id., 563.) When one appropriation is available for a specific object a second appropriation can not be used for the same work, unless from the second appropriation it clearly appears that it was the intention of Congress that such second appropriation should be available in addition to the specific appropriation. (Id., 417.) When an appropriation to which an expense is properly chargeable is exhausted, another appropriation can not be used. (Id., 492.)

Pecuniary responsibility of officers.—Where purchases of army supplies are made in pursuance of an order issued by competent military authority, said order, or a certified copy thereof, should be filed with the first voucher on which payment for supplies is made and reference be made thereto on all the others. (Id., 287.)

Where there is a plain direction or prohibition spread upon the statute books, which is as well known to the inferior as to a superior officer, it is clearly binding upon both officers, and unless it can be affirmatively shown that the inferior called the attention of the superior to the infringement of law in the order, and that thereupon the superior renewed the order, the inferior officer must be held liable. (III Dig. Dec. 2d Comp., 9, par. 3.)

It is the duty of the disbursing officer to exercise the utmost care and vigilance in the disbursement of the public funds intrusted to him, and it is his imperative duty to see that the entire amount claimed is due and that payment thereof is fully warranted from the data given on the muster roll or final statement. If the information is not sufficient he must seek for more. He can not protect himself, in an erroneous payment made without due care, by charging a similar lack of care against the officer who gave the certificate. (Id., 10, par. 9. See also pars. 653 and 654, A. R., 1913.)

The word "voucher" can not be construed as synonymous with the word "receipt," it having a far broader signification in law. Any written evidence which establishes facts entitling a disbursing officer to credit is a voucher. "The word 'voucher' would seem to imply evidence, written or otherwise, of the truth of a fact." (The People *v.* Green, 5 Daly, N. Y., 194; III Comp. Dec., 378.)

Money vouchers.—The term "voucher," when used in connection with the disbursement of moneys, implies some written or printed instrument in the nature of a receipt, note, account, bill of particulars, or something of that character, which shows on what account or by what authority a particular payment has been made, and which may be kept or filed away, by the party

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tions made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obli-

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receiving it, for his own convenience or protection, or that of the public. (People *v.* Brinkerhoff 107, Ill., 495.)

The presentation by a disbursing officer of a voucher properly receipted by the person entitled to payment is but *prima facie* evidence of actual payment by him, and will not entitle him to credit unless the amount has been actually paid to the proper person or his representative. (I Compt. Dec. 228.) The receipt of a witness to a pay roll is valid although written with a pencil, and not with ink, as required by the regulations and practice of the Department. (Id., 419.)

What shall be considered proper vouchers and the extent and character of the evidence necessary to support a claim must, of course, depend upon the circumstances of each case. I think, however, that the term "proper vouchers" must be construed to mean the vouchers ordinarily required in the transaction of business of this character. Presumptions should not be accepted in the place of proof where the latter can be procured. (V Comp. Dec., 140. See, also, VI id., 14, 97.)

Every voucher signed on behalf of any person, firm, or corporation by an agent or attorney should bear the name of the proper firm, person, or corporation, followed by the name of the agent or attorney. (III Dig. 2d Comp. Dec., 379.)

Under a resolution of the executive committee of the Western Union Telegraph Company passed November 24, 1886, any person in charge of any office of said company is authorized to receive and receipt for payments to said company, and receipts by such persons for such payments are to be held as binding upon said company. (Id.)

An order from the court appointing a receiver and showing his authority to act as such should be filed with or referred to in every voucher or claim presented by him for payment. (Id., 378.)

Receipts for small amounts for occasional service paid to corporations, such as railroad, telegraph, turnpike, transfer, express, steamboat, hotel, newspaper, and ice companies, may be signed by the local agent in charge of the business of the company at the place where the service is rendered, or where it begins or terminates, and the certificate of the officer making payment that the person to whom payment was thus made was then the local agent of the company, in charge of its business at the place designated, will be sufficient evidence of the agent's authority to receive and receipt for the money paid. (Id.)

The term "small amounts," as used in the Second Comptroller's decision of March 14, 1887, applies only to occasional payments of amounts deemed too insignificant to justify the Government in demanding written evidence of an agent's authority to receive and receipt for moneys, in accordance with the general rule. (Id.)

All vouchers in support of payments of percentages retained under contracts must be accompanied, as contemplated by section 277 of the Revised Statutes, by satisfactory evidence, either primary or secondary, that the several amounts thereon paid have been retained, have since become payable, and have not previously been paid. (Id., 379.)

It is within the power of the accounting officers, in the settling of accounts of disbursing officers, where it appears that an expenditure has been made from the wrong appropriation, if the expenditure be right in itself and correct otherwise, to charge the amount to the appropriation for which the expenditure is liable. If at the time of the settlement the appropriation to which the expenditure is chargeable is exhausted, the amount should be disallowed against the disbursing officer, and he should be required to apply to Congress for relief. (Id., 36.)

Where one Department receives from another Department supplies which are within the scope of appropriations belonging to each a reimbursement of the appropriation of the one from the appropriation of the other, of the cost of the supplies, is not a violation of section 3678, Revised Statutes; nor do the provisions of section 3618, Revised Statutes, apply to such case. (XVII Opin. Att. Gen., 480.)

For provisions of Army Regulations in respect to the preparation and execution of vouchers, see paragraphs 631–652, Army Regulations of 1913.

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gation is authorized by law. Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such Executive Department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than one hundred dollars or by imprisonment for not less than one month.[1]

[1] The legal liability of the Government does not generally depend upon appropriations. The constitutional provision, in Article I, section 9, that "no money shall be drawn from the Treasury but in consequence of appropriations made by law," is a mere limitation and restriction upon the executive officers of the Treasury Department, and does not prevent Congress, the law-making power, from involving the Government in contracts to pay money to any extent. When such contracts are made, the parties who acquire rights to compensation thereunder must wait until an appropriation is made before they can receive their money, but the right on their part and the obligation on the part of the United States remain unchanged. Failing to obtain direct appropriations for their benefit, public creditors may sue in this court and thus obtain payment out of any money appropriated for the payment and satisfaction of private claims. (Mitchell *v.* U. S., 18 Ct. Cls., 281, 286.) The excepting clause in section 3732, Revised Statutes (*a*) in relation to contracts for and purchases of clothing, subsistence, forage, fuel, quarters, etc., operates to withdraw such contracts and purchases from the prohibition contained in this paragraph in relation to expenditures in excess of the appropriations for a particular fiscal year, and such purchases may be made, provided the necessities of the current fiscal year be not exceeded.

A deficiency appropriation is one made to pay a liability legally created, for the payment of which an appropriation previously made is insufficient; it supplements the original appropriation, partakes of its nature, and is subject to the same limitations which attach by law to the use of the original appropriation. (IV Comp. Dec., 61.)

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Sec. 3679, R. S., as amended by sec. 4, act of Mar. 3, 1905 (33 Stat. 1257), and Sec. 3, act of Feb. 27, 1906 (34 Stat. 48).

189. *Same.*—No Act of Congress hereafter passed shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed. *Sec. 9, Act of June 30, 1906 (34 Stat. 764).*

190. *Commissions and inquiries—Expenditures for.*—No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President. *Sec. 3681, R. S.*

191. *Balances—Disposition of after two years.*—All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the Auditor of the Treasury, whose duty it is to settle accounts thereunder, and the Auditor shall examine the books of his office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in his office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper Department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated. *Sec. 3691, R. S.*

192. *Same.*—From and after the first day of July, eighteen hundred and seventy-four, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, light-houses, fortifications, public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress. *Sec. 5, Act of June 20, 1874 (18 Stat. 110).*

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193. *Same—Application of.*—All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.[1]—*Sec. 3690, R. S.*

194. *Fiscal year character of appropriations—Exceptions.*—No specific or indefinite appropriation made hereafter in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following five classes: "Rivers and harbors," "lighthouses," "fortifications," "public buildings," and "pay of the Navy and Marine Corps," last specifically named in and excepted from the operation of the provisions of the so-called "covering-in Act" approved June twentieth, eighteen hundred and seventy-four, or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation Act in which it is contained makes provision. *Sec. 7, Act of Aug. 24, 1912 (37 Stat. 487).*

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[1] The use of every fiscal year appropriation is limited by section 3690 of the Revised Statutes and by its own terms to the payment of expenses properly incurred during the fiscal year for which it is made, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes must be carried to the surplus fund and covered into the Treasury in conformity with the provisions of section 5 of the act of June 20, 1874. (18 Stat., 110; 3 Dig., 2d Comp. Dec., par. 96.) The use of any part of an appropriation made for one fiscal year for the payment of any liability incurred during a succeeding fiscal year is prohibited by section 3679 as well as by section 3690 of the fiscal year. (II Comp. Dec., 248.)

A proposal in writing to furnish supplies and a written acceptance by the authorized agent of the Government constitute a contract within the meaning of section 3690 of the Revised Statutes, so as to authorize the use of an appropriation for the fiscal year in which the contract is made in paying for such portion of the supplies as are delivered under the contract after the expiration of the fiscal year. (II Comp. Dec., 248.)

An appropriation is properly chargeable with all the expenses necessary to accomplish the object for which it is made, unless particular items of expense are specifically provided for by some other appropriation. (IV Comp. Dec., 24; I id., 472, 517; II id., 74; III id., 623.) There is no authority under an act of appropriation, made specifically for the service of a particular fiscal year, to enter into a contract for supplies, etc., for the service of a subsequent fiscal year, and therefore, as to that appropriation, such a contract is not "properly made within that year," within the meaning of section 3690, Revised Statutes. (IV id., 553.) While it is a rule that a specific appropriation excludes the use, for the same objects, of a general appropriation, yet when there are two appropriations both applicable to the same object they are to be treated as cumulative, and either or both can be used in the discretion of the head of the Department. (Id., 121. See, also, I id., 533.) The balance of an appropriation which has been treated as not limited to a fiscal year will, upon the accomplishment of the object for which it was made, be covered into the Treasury, in analogy to the practice required by law (act of June 23, 1874, 18 Stat.,

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195. *Fiscal year.*—The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, except accounts of the Secretary of the Senate for compensation and traveling expenses of Senators, and accounts of the Sergeant-at-Arms of the House of Representatives for compensation and mileage of Members and Delegates, shall commence on the first day of July in each year; and all accounts of receipts and expenditures required by law to be published annually shall be prepared and published for the fiscal year, as thus established. The fiscal year for the adjustment of the accounts of Secretary of the Senate for compensation and traveling expenses of Senators, and of the Sergeant-at-Arms of the House of Representatives for compensation and mileage of Members and Delegates, shall extend to and include the third day of July. *Sec. 237, R. S., as amended by sec. 9, Act of Oct. 1, 1890 (26 Stat. 646).*

196. *Transmittal of accounts to Washington and to auditors.*—All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within sixty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by

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275) in the case of balances of appropriations for the construction of public buildings. (I Comp. Dec., 487.)

An appropriation found in an annual appropriation act and made specifically for the service of a certain fiscal year is not available thereafter except in payment of expenses properly incurred, or in the fulfillment of contracts properly made within the year as provided in section 3690 of the Revised Statutes. (I id., 170.)

Congress intends that each annual appropriation should bear the burdens of the particular year for which it is granted, and that it should be for the proper use of that year, and no other. (VI id., 815.)

Permanent appropriations are those made for an unlimited period. Indefinite appropriations are those in which no amount is named. (XIII Opin. Att. Gen., 289.) A "permanent specific appropriation" is one which requires the money payable by virtue of it to be applied to an object specifically pointed out by law, and which may be so applied at any time in the future, and not merely for the service of the current fiscal year. It exists when the act of Congress which made it points out the purpose to which it applies, and shows that it was intended to be used in the future, without limit as to time. If the object to which it is to be applied has no reference to, or connection with, the service of any particular year, the appropriation may be considered as permanent, where such intention is apparent in the act making it. If it be for the discharge of an existing obligation having no connection with the service of the current year, and not in part discharge of a continuous service, it may reasonably be supposed that Congress intended the liability to be paid without reference to time. (2 Lawrence, Comp. Dec., 2d ed., 246; III Comp. Dec., 623, 625.)

Section 10, act of March 4, 1909 (35 Stat. 1027), provided that all unexpended and unobligated balances of appropriations which remained on the books of the Treasury July 1, 1904, except balances of permanent specific appropriations, should be carried to the surplus fund and covered into the Treasury, and defined the term "permanent specific appropriation" within the meaning of that act.

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the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons: *Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid sixty days in transmitting accounts, an order of the President [or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury] in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law. *Sec. 12, Act of July 31, 1894 (28 Stat. 209)*; *Act of Mar. 2, 1901 (31 Stat. 910)*.

(For the requirement that accounts shall be rendered monthly, and that distinct accounts shall be made under the various appropriations, see pars. 417 and 418 post. The above quoted act was amended by the insertion of the clause in brackets by section 4 of the act of March 2, 1895. (28 Stat. 807.))

197. *Rules for administrative examination of accounts.*—It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section twelve of this act, before the transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several departments or establishments. *Sec. 22, Act of July 31, 1894 (28 Stat. 210)*. (*See Pars. 655 and 656, A. R., 1913.*)

198. *Administrative examination of accounts.*—Hereafter the administrative examination of all public accounts, preliminary to their audit by the accounting officers of the Treasury, shall be made as contemplated by the so-called Dockery Act, approved July thirty-first, eighteen hundred and ninety-four, and all vouchers and pay rolls shall be prepared and examined by and through the administrative heads of divisions and bureaus in the executive departments and not

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by the disbursing clerks of said departments, except those vouchers heretofore prepared outside of Washington may continue to be so prepared and the disbursing officers shall make only such examination of vouchers as may be necessary to ascertain whether they represent legal claims against the United States. *Act of Aug. 23, 1912 (37 Stat. 375).*

199. *Officers delinquent in rendering accounts.*—The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administrative departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States.[1] *Sec. 4, Act of May 28, 1896 (29 Stat. 179).*

200. *Forms of keeping and rendering accounts to be prescribed by.*—The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.[2] *Sec. 5, Act of July 31, 1894 (28 Stat. 206.)*

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[1] Section 260 of the Revised Statutes requires that the Secretary of the Treasury shall lay before Congress at the commencement of each regular session, accompanying his annual statement of the public expenditure, the reports which may be made to him by the Auditors charged with the examination of the accounts of the Department of War and the Department of the Navy, respectively, showing the application of the money appropriated for those Departments for the preceding year.

This provision replaces the requirement of section 12 of the act of July 31, 1894 (28 Stat. 209), that "the Secretary of the Treasury shall, on the first Monday in January in each year, make report to Congress of such officers as are then delinquent in the rendering of their accounts or in the payment of balances found due from them for the last preceding fiscal year."

[2] Public accounts, within the meaning of section 5 of the act of July 31, 1894, which provides that the Comptroller of the Treasury shall "prescribe the form of keeping and rendering all public accounts," are accounts in which the United States is concerned either as debtor or creditor. (VI Comp. Dec. 35.)

Our scheme of government includes an accounting system, with proper officers thereof, and it seems reasonable to conclude that when the law provides for an accounting, and makes no special provision therefor, it was the legislative intent that the accounting should be done in the usual manner—that is, by the accounting officers of the Treasury Department. (Id. 283, 284.)

The act of July 31, 1894, specifically devolves upon the accounting officers of the Treasury the particular duties of examining the public accounts and certifying balances arising thereon; and their exercise of those duties, including the weighing of evidence, the construction of statutes, and the application of general principles of law in connection therewith, is exclusive. (V id. 410.)

All accounts for the expenditure of public moneys should be itemized so far as practicable, and a discretion given to the officer having control of an appropriation does not dispense with this requirement. (IV id. 159.)

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201. *Authorized to direct settlement of particular accounts.*—The Comptroller of the Treasury, in any case where, in his opinion, the interests of the Government require it, shall direct any of the auditors forthwith to audit and settle any particular account which such auditor is authorized to audit and settle. *Sec. 6, id.*

202. *Decisions to govern in settlements.*—Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.[1] *Sec. 8, id.*

203. *Recovery of money—Institution of suits for.*—Whenever any person accountable for public money neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States upon the adjustment of his account, the Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six

[1] Paragraph 6, section 8, of the act of July 31, 1894, does not authorize the Comptroller to render a decision in advance of the settlement of accounts, except upon questions presented by disbursing officers or the heads of Executive Departments involving payments to be made by them. (1 Comp. Dec., 1; see also id., 87, 139, 411, 431, 500; III Id., 529; IV Id., 332.) Nor is the Comptroller authorized to render such advance decision until the head of a Department, having control of an appropriation, determines to apply it to a particular purpose. (1 id., 89.) The Comptroller has no jurisdiction to entertain such an application when made by the head of a bureau in an Executive Department. (1 id., 199.) Nor when the request comes from the head of one Executive Department in respect to an appropriation under the head of another Executive Department. (1 id., 317.)

Requests for the decision of the Comptroller, under section 8 of the act of July 31, 1894, must be made by the disbursing officer himself and not by an attorney authorized to represent him in the settlement of his accounts. (I id., 502.)

When an expense has not yet been incurred, and a decision of the Comptroller is desired for the guidance of a Department, the request therefor should be presented by the head of the Department having control of the appropriation, and not by the disbursing officer. (I id., 500.)

The Comptroller of the Treasury is not authorized to render decisions to disbursing officers upon questions of law pertaining to payments which have been made by them. (V Comp. Dec., 727.)

The Comptroller of the Treasury is not authorized to render to the heads of Departments advisory opinions upon questions of law not involving payments to be made by or under them. (Id., 653.)

A statement by the Comptroller of the Treasury in an advance decision, upon a statement of facts submitted by a disbursing officer, which is broader than the facts stated rendered necessary, is a mere dictum and is not binding upon the Auditor or the Comptroller in the settlement of the account of the disbursing officer. (V id., 562.)

Under the act of July 31, 1894, the Auditors of the Treasury are not authorized to render decisions in advance of the settlement of accounts, such authority being, by section 8 of said act, granted only to the Comptroller of the Treasury. (I id., 94.)

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per centum per annum from the time of receiving the money until it shall be repaid into the Treasury. *Sec. 3624, R. S., as amended by Sec. 4 of the Act of July 31, 1894 (28 Stat. 205).*

(See U. S. *v.* Gaussen, 19 Wall., 198, and U. S. *v.* Verdier, 164 U. S., 213, 219.)

204. *Auditors for the War and Navy Departments—Duties.*—The Auditors charged with the examination of the accounts of the Departments of War and of the Navy shall keep all accounts of the receipts and expenditures of the public money in regard to those Departments, and of all debts due to the United States on moneys advanced relative to those Departments; shall receive from the Comptroller the accounts which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those Departments, the examination of the accounts of which has been assigned to them. They shall annually, on the first Monday in November, severally report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and they shall make such reports on the business assigned to them as the Secretaries of those Departments may deem necessary and require. *Sec. 233, R. S.*

205. *Auditor for the War Department—Duties.*—Accounts shall be examined by the Auditors as follows: * * * Second. The Auditor for the War Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War. *Sec. 7, Act of July 31, 1894 (28 Stat. 206).*

206. *Recovery of debts—Superintendence of.*—The Auditors, under the direction of the Comptroller of the Treasury, shall superintend the recovery of all debts finally certified by them, respectively, to be due to the United States. *Sec. 4, id.*

207. *Balances, when certified, final, except that they are subject to revision by Comptroller.*—The balances which may from time to time be certified by the Auditors to the division of bookkeeping and warrants, or to the Postmaster-General, upon the settlement of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts have been settled, the head of an Executive Department to which the account pertains, or the Comptroller of the Treasury, may, within a year,

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obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account.[1] *Sec. 8, id.*

208. *Acceptance of payment under settlement.*—Any person accepting payment under a settlement by an auditor shall be thereby

[1] Under section 8 of the act of July 31, 1894, an appeal will not lie to the Comptroller of the Treasury except from the final certificate of an auditor. A suspension of action upon a case by an auditor is not a final decision of such officer. (Id., 381). An appeal to the Comptroller from the action of an auditor will not lie until the auditor has taken final action in the case. A suspension for further evidence is not a final decision upon which an appeal can be based. (I Comp. Dec., 448, 500.)

(1) The Auditor, in the first instance, has the original and exclusive jurisdiction to receive, examine, and settle all accounts.

(2) The Comptroller is without jurisdiction to entertain any claim not previously passed upon and settled by the Auditor, and, until the Auditor has settled the account, the Comptroller is without jurisdiction to revise it.

(3) The settlement of an account by the Auditor, so far as the claimant's right or power before the accounting officers is concerned, is final and conclusive, except that any person whose account may have been settled by the Auditor may, within a year, obtain a revision of said account by the Comptroller.

(4) The person who may obtain such revision is the person whose account has been settled by the Auditor. (V Comp. Dec., 333, 334.)

The Comptroller has the exclusive right to reopen an account which has been revised by himself or his predecessors. (IV Comp. Dec., 303.) After the expiration of a year from the date of settlement an Auditor has the exclusive right to reopen an account settled by himself or his predecessors. (Id.) Before the expiration of a year the right of revision by the Comptroller is exclusive, and an Auditor can not reopen an account within that period. (Id.) After the expiration of six months from the date of settlement by the Second Auditor, under the act of July 1, 1892 (27 Stat., 194), no appeal having been taken within that period, the Auditor for the War Department has the exclusive right to reopen the settlement. (Id., 471.)

Section 8 of the act of July 31, 1894, specifies the officers and persons by whom the revision of accounts by the Comptroller may be obtained, and it must be construed to be exclusive. (IV Comp. Dec., 723.) Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to revise, upon his own motion, all items embraced in an account, including items upon which payment has been accepted; and in particular instances, where justice requires it, such authority may be exercised in favor of a claimant. (Id., 622.)

The accounting officers are not authorized to reopen accounts which have been settled, except for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence. (VI Comp. Dec., 236.) The accounting officers are not authorized to reopen accounts for the purpose of correcting decisions upon questions of law subsequently held to be erroneous. (Id., 91.)

The right of the accounting officers to reopen accounts which have been settled, either by themselves or their predecessors, for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence, or for fraud or collusion, has received the sanction of the courts and of the law-making power. The act of July 31, 1894, does not take away or modify that right. (IV Comp. Dec., 303.)

Where the Comptroller has made a final settlement of a claim from the War Department, an order of the Secretary that the accounts be reexamined has no validity. (B. & O. R. R. Co. *v.* U. S. 31, Ct. Cls., 484.)

In a case where the Auditor for the War Department disallowed the claim of a soldier for pay and allowances upon the ground of desertion, and, subsequent to said settlement, the Secretary of War has removed the charge of desertion and issued a discharge certificate under the act of March 2, 1889: *Held*,

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precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled, a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision:

That the application for pay and allowances upon said amendment of record is a new claim, coming within the jurisdiction of the Auditor for the War Department, and is not to be regarded as an appeal under section 8, act of July 31, 1894, or an application for a rehearing. (III Comp. Dec., 144; IV id., 303, 332, 471, 622, 723.)

Under the act of July 31, 1894, an auditor has no jurisdiction to review his own final action in the settlement of an account, but such settlement can be reopened only on a revision thereof by the Comptroller of the Treasury within a year, as provided in section 8 of said act. (I Comp. Dec., 27. See, also, id., 31, 78, 87, 139, 199, 317, 381, 448, 500, 502; II Id., 4, 401, 510.)

Under section 8 of the act of July 31, 1894, appeals from disallowances by the auditors must be taken within a year from the date of the settlement. If taken after the expiration of a year, the Comptroller is without jurisdiction to entertain the appeal. (Id., 510.)

This paragraph expressly repeals section 1 of the act of March 30, 1868 (sec. 191, Rev. Stat.). The clause "shall be conclusive upon the Executive Departments of the Government," which formed a part of the repealed section, was enacted to settle a long-pending dispute between the accounting officers and the heads of departments as to their respective powers over claims and accounts, and has been interpreted to relate "only to matters of accounting in the Treasury Department, and of ascertaining the balance in each particular account which shall be drawn from the Treasury. * * * It makes conclusive upon the executive branch of the Government only the 'balances' stated by the accounting officers and their 'decision thereon' for the purpose of determining for what amounts, if any, warrants may be drawn on the Treasury. * * * It does not make such decisions conclusive upon the head of a department in the exercise of his discretion as to orders to be issued to his subordinates in such connections as the one now under consideration." (Billings *v.* U. S., 23 Ct. Cls., 166; McKee *v.* United States, 12 id., 504.) It was held in the case of Surgeon Billings (23 Ct. Cls., 166) that the War Department had authority to send a surgeon to the International Medical Congress at London at the expense of the Government, that being a military service which a surgeon could be required to render. In the case of Paymaster Smith (24 Ct. Cls., 209) it was held that the employment of experts before a court-martial was within the legal and proper discretion of the Secretary of War. In the case of the United States *v.* Jones (18 How., 92, 95) the court held "that the Secretary of the Navy represents the President and exercises his power on the subjects confided to his Department. He is responsible to the people and to the law for any abuse of the powers intrusted to him. His acts and decisions on subjects submitted to his jurisdiction and control by the Constitution and laws do not require the approval of any officer of any other department to make them valid and conclusive. The accounting officers of the Treasury have not the burden cast upon them of reviewing the judgments, correcting the supposed mistakes, or annulling the orders of the heads of departments." (See, also, U. S. *v.* McDaniel, 7 Pet., 1, 14; U. S. *v.* Eliason, 16 Pet., 291; Brown *v.* U. S., 113 U. S., 568, 571; Edwards *v.* Darby, 12 Wheat., 206; U. S. *v.* Pugh, 99 U. S., 265; Parkhurst *v.* U. S., 29 Ct. Cls., 399.)

When the Government is estopped from further controverting a question adjudicated by a court of competent jurisdiction it is the duty of the accounting officers to follow the decision in subsequent settlements of the parties' accounts. The legislation of Congress and the decisions of the Supreme Court unmistakably indicate that judgments of this court, not appealed from, are obligatory upon the Government as upon the claimant, and are intended to be guides and precedents for the Executive Departments. (Meigs *v.* U. S., 20 Ct. Cls., 181; U. S. *v.* O'Grady, 22 Wall., 641; Wis. Cent. R. R. Co. *v.* U. S., 164 U. S., 190.)

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Provided, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this act. *Sec. 8, id.*

209. *Decisions construing statutes to be revised by Comptroller.*—All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby. *Sec. 8, id.*

210. *Preservation of accounts.*—The auditors shall, under the direction of the Comptroller of the Treasury, preserve with their vouchers and certificates all accounts which have been finally adjusted. *Sec. 8, id.*

211. *Settlements not to be reopened.*—Nothing in this act shall be construed to authorize the reexamination and payment of any claim or account which has heretofore been disallowed or settled.[1] *Sec. 23, id.*

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[1] The accounting officers have no jurisdiction to reopen settlements made by their predecessors, because a subsequent decision of the courts has so changed the construction of the law under which the settlements were made as to warrant a different result in the settlements. (2 Comp. Dec., 401.)

Settled accounts in the Treasury Department, where the United States have acted on the settlement and paid the balance therein found due, can not be opened or set aside years afterwards merely because some of the prescribed steps in the accounting which it was the duty of a head of a department to see had been taken had in fact been omitted, or on account of technical irregularities when the remedy of the party against the United States is barred by the statute of limitation and the remedies of the United States are intact, owing to its not being subject to an act of limitation. (U. S. *v.* Johnston, 124 U. S., 236, 1 Comp. Dec., 192.)

An error by a predecessor in construing the law applicable to the claim he has adjusted is no ground for a rehearing. (See vol. 19, Ct. Cls. Dec., 508; 23 id., 123; 25 id., 327; and 29 id., 225; U. S. Supreme Court Dec., 15 Pet., 400; 11 Comp. Dec., 459.)

An error by a predecessor in construing the law, applicable to the claim he has adjusted is no ground for a rehearing. (See vol. 19, Ct. Cls., 508; 23 id., 123; 25 id., 327; and 29 id., 225; 15 Pet., 400; 11 Comp. Dec., 459.)

The accounting officers of the Treasury Department are not authorized to reopen accounts settled by their predecessors except for the purpose of correcting mistakes of fact arising from errors in calculation, or upon the production of newly discovered material evidence, or for fraud. (14 Comp. Dec., 795.)

The act of July 31, 1894, does not take from the accounting officers the right to reopen accounts which have been settled, either by themselves or their predecessors, for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence, or for fraud or collusion. (4 Comp. Dec., 303; but see 1 id., 27; 2 id., 210.) The Comptroller has the exclusive right to reopen an account which has been revised by himself or his predecessors. (4 id., 303.) Before the expiration of a year the right of revision by the Comptroller is exclusive, and an Auditor can not reopen an account within that period. After the expiration of a year from the

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212. *Accounts of Government officers in the District of Columbia accessible to accounting officers.*—All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials. *Sec. 5, Act of Mar. 15, 1898 (30 Stat. 316).*

213. *Accounts of line officers—Settlement of.*—The Auditor of the Treasury for the War Department shall audit and settle the accounts of line officers of the Army, to the extent of the pay due them for their services as such, notwithstanding the inability of any such line officer to account for property intrusted to his possession, or to make his monthly reports or returns, if such Auditor shall be satisfied by the affidavit of the officer or otherwise that the inability was caused by the officer's having been a prisoner in the hands of the enemy, or by any accident or casualty of war. *Sec. 278, R. S., as amended by Sec. 7 of the Act of July 31, 1894 (28 Stat. 206).*

214. *Evidence of honorable discharge to be returned to officers and enlisted men.*—In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States, to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered. *Sec. 282, R. S.*

215. *Claims and accounts—Settlement of.*—All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Department of the Treasury.[1] *Sec. 236, R. S.*

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date of settlement, an Auditor has the exclusive right to reopen an account settled by himself or his predecessors. (Id.)

Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to revise, upon his own motion, all items embraced in an account, including items upon which payment has been accepted; and, in particular instances, where justice requires it, such authority may be exercised in favor of a claimant. (4 Comp. Dec., 623.)

[1] The act of March 3, 1849 (9 Stat. 414; secs. 3482–3487, R. S.), provided for the reimbursement of officers and men for horses and other private property lost in the military service. Several limitations upon the filing of claims under this act have been enacted by Congress; but the general limitation will be found in section 2 of the act of January 9, 1883 (22 Stat. 401), which contains the requirement that "all claims arising under the act approved March 3, 1849, and all acts amendatory thereof, which shall not be filed in the proper

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216. *Claims allowed to be reported to Congress.*—The Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due each claimant whose claim has been allowed in whole or in part to the Speaker of the House of Representatives and the presiding officer of the Senate, who shall lay the same before their respective Houses for consideration. *Sec. 2, Act of July 7, 1884 (23 Stat. 254).*

217. *Claims for property lost or destroyed.*—The proper accounting officers of the Treasury are hereby authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter, be, lost or destroyed in the military service, under the following circumstances:

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department within one year after the passage of this act shall be forever barred and shall not be received, considered, or audited by any department of the Government." Section 2 of the act of August 13, 1888 (25 Stat. 437), suspended the limitation as to the presentation of claims for losses of horses during the war of the rebellion for three years. The act of March 3, 1849, therefore became inoperative in respect to general claims on August 13, 1889, and as to claims for horses, etc., lost during the rebellion, on August 13, 1891.

The act of January 9, 1883 (22 Stat. 401, sec. 2), providing that all claims for horses lost in battle, etc., which are not filed in the proper department within one year after the passage of the act will be barred and shall not be considered by any department of the Government, does not extend to the jurisdiction of authority of this court. The words "filed in the proper department," and the words "received, considered, and audited by any department of the Government," are not words of description in reference to the jurisdiction of a court. (Hardie *v.* U. S., 39 Ct. Cls., 250.)

In the performance of the duty imposed by this statute the Secretary of the Treasury is not subject to the control of the courts of the United States, and the duty not being ministerial in character a writ of mandamus will not lie to compel the allowance of a claim presented under the statute. Kendall *v.* Stockton, 12 Pet., 524; Decatur *v.* Paulding, 14 Pet., 497, 515; U. S. *v.* Guthrie, 17 How., 284, 304; Brashear *v.* Mason, 6 How., 92, 102. Such action on the part of the courts would also be in the nature of entertaining a suit against the United States, which is not within their jurisdiction. U. S. *v.* Guthrie, 17 How., 284, 305.

Where a claim within the scope of his official authority was submitted to the Secretary of the Treasury, and by him decided adversely, it is incompetent for his official successor to set the same aside or reopen it unless there has been a mistake in a matter of fact or material testimony discovered and produced. V Opin. Att. Gen., 664. A head of a department of the Government has no right to review the acts of his predecessors, except to correct an error of calculation. He can not recall a credit given or allowance made. Such action is for the judiciary. U. S. *v.* Bank of Metropolis, 15 Pet., 377.

The accounting officers of the Treasury have no jurisdiction to settle claims for unliquidated damages arising from the torts of the agents of the Government. II Comp. Dec., 174, 487; McKee *v.* U. S., 12 Ct. Cls., 556; Dennis *v.* U. S., 20 id., 119; XIV Opin. Att. Gen., 24. Nor have the accounting officers such jurisdiction over a claim for unliquidated damages not arising from the tortious act of an officer of the Government. II Compt. Dec., 487; I id., 261; II id., 174.

The accounting officers of the United States are without jurisdiction to examine and settle individual claims of officers and enlisted men of the organized militia of a State, Territory, or District of Columbia for pay, subsistence, and transportation while engaged, under the provisions of section 14 of the act of January 21, 1903, in field or camp service for instruction. (X Comp. Dec., 635.)

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First. When such loss or destruction was without fault or negligence on the part of the claimant.[1]

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.[2]

Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of

[1] Clause first stands alone as an independent basis for a claim, and was intended to reach cases not covered by the other two clauses. This clause is broader in its scope than the two succeeding clauses, but absence of fault or negligence must be proven if the claim is made under it. Broad as this clause is, it does not cover every case of loss an officer or soldier might sustain in his "reasonable, useful, and necessary" property while he was in the military service. (II Compt. Dec., 644, 647.)

Stating the proposition in other words, it does not make the United States the absolute insurer, against all accidents and contingencies, of the reasonable, useful, and necessary property of officers and soldiers. To entitle a person to reimbursement under this clause the loss or destruction must be without fault or negligence, directly or indirectly, near or remote, of the owner, and must have been caused by, or resulted from, some exigency or necessity of the military service. It must reasonably be attributable to the fact that it was held in the military service, whereby the owner was deprived, in some degree, of the control over it which he would have in civil life, and where it would be subjected to dangers not ordinarily incident to its use in civil life. Under all conditions of a use of such personal property as is covered by the law it is subject to deterioration and loss; but in the military service the dangers are greater and peculiar because of the environments of that service. It was to provide against personal loss resulting from these special and peculiar dangers that this law was enacted. Any other view of the law would make the United States the insurer of all personal property necessarily used in its service by officers and soldiers. This can not have been the intent of Congress. If it be held that absence of fault or negligence is the only condition precedent to reimbursement an officer would be entitled to payment for a horse dying from old age, or a uniform, side arms, or household furniture worn out in use. (III id., 637.)

[2] The true construction of clause second is that the claimant is entitled to reimbursement without being required to show, affirmatively, that he was not guilty of negligence, "where the private property was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment." The leading idea in this clause is that the loss would be attributable to the unseaworthiness of the vessel, and that the soldier sustaining the loss would have no option as to the shipment on said vessel and no responsibility for a loss under such circumstances. (II id., 647.)

To entitle a person to recover under the first clause of the act the following facts, among others, must be established:

1. The loss must be of private property of the officer or soldier.

"The articles must not only belong to him, but must be used by him and for him alone, as it were, personal to him in the performance of his duty."

2. The property must be such as the Secretary of War shall decide to be

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war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction.[1] *Act of Mar. 3, 1885 (23 Stat. 350)*.

218. *Claims of volunteers who served during Spanish War.*—No claims for arrears of pay, bounty, or other allowances growing out of the service of Volunteers who served in the Army of the United States during the War with Spain shall be received or considered by the accounting officers of the Treasury unless filed in the office of the Auditor for the War Department on or before December thirty-first, nineteen hundred and fourteen. *Act of Dec. 22, 1911 (37 Stat. 49)*.

219. *No deduction for attorneys' fees.*—In the settlement of claims of officers, soldiers, sailors, and marines, or their representatives, and

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reasonable, to be useful, and to be necessary for such officer or soldier while in quarters, engaged in the public service in the line of duty.

3. The loss must have been without fault or negligence, in any degree, of the claimant.

4. The loss must have been caused by some exigency or necessity of the military service, such as would naturally be attributable to and would flow from such service. To establish a case under this act the property must have been lost or destroyed in the military service; not merely while it was in use in that service, but because it was in that service. Being in that service must have been the proximate cause of the loss.

5. The loss must *not* have been caused by the natural wear and tear, or deterioration, of the articles in ordinary use in the service. Inherent defects in articles, on account of which they are unable to stand the ordinary strain of the service, will prevent recovery.

6. Payment must be limited to the commercial value of the articles at the time of their loss, and not exceed the value of such articles as it was necessary for the officer or soldier to have in the service. Unusually expensive articles can not be considered necessary. The purchase price of an article is more likely to be a fair measure of its value than the estimate placed upon it after the purchaser obtains possession of it. The purchase price should not be exceeded without good cause shown.

7. Proof of absence of fault or negligence must state all the circumstances, and be sufficiently elaborate to enable the accounting officers to reach their own conclusions. Mere opinions or conclusions of witnesses, without full statement of facts upon which they are based, are of little value.

8. Any want of proper care either in the claimant or his servant, or the incompetency of the servant, will prevent recovery.

9. It is the duty of owners to care for their property; any voluntary relaxation of that care by intrusting it to others, is negligence within the meaning of the law.

Although under clause second the claimant is not required to show affirmatively that he was not guilty of fault or negligence, this will not be understood as precluding the Government from showing that he was so guilty, and, if so found, he will not be entitled to recover. (III id., 637; XIII id., 334, 432, 875.)

[1] Under clause third the claimant must show that he was not guilty of fault or negligence other than of neglecting his own property in his efforts to save that of the Government. (III Comp. Dec., 636; see, also, II id., 644; III id., 636, 659; XIX Opin. Att. Gen., 693; G. O. 35, A. G. O., 1896; G. O. 39, A. G. O., 1897; Circular 1, A. G. O., 1897; Par. 726, A. R., 1913.)

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all other claims for pay and allowances within the jurisdiction of the Auditor for the War Department or the Auditor for the Navy Department, presented and filed hereafter in which it is the present practice to make deductions of attorneys' fees from the amount found due, no deductions of fees for attorneys or agents shall hereafter be made, but the draft, check, or warrant for the full amount found due shall be delivered to the payee in person or sent to his bona fide post-office address (residence or place of business). *Act of June 6, 1900 (31 Stat. 637).*

220. *Conspiracy to defraud the Government—Purchase of arms, equipment, etc., from soldiers.*—Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be

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fined not more than five hundred dollars, and imprisoned not more than two years. *Sec. 35 Act of Mar. 4, 1909, Criminal Code (35 Stat. 1095).*

221. *Priority of.*—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. *Sec. 3466, R. S.*

[U. S. *v.* Fisher, 2 Cr., 358; U. S. *v.* Hooe, 3 Cr., 73; Harrison *v.* Sterry, 5 Cr., 289; Prince *v.* Bartlett, 8 Cr., 431; U. S. *v.* Bryan, 9 Cr., 374; Thelusson *v.* Smith, 2 Wh., 396; U. S. *v.* Howland, 4 Wh., 108; Conard *v.* Insurance Company, 1 Pet., 386; Hunter *v.* U. S., 5 Pet., 173; U. S. *v.* State Bank, 6 Pet., 29; U. S. *v.* Hack, 8 Pet., 271; Brent *v.* Bank of Washington, 10 Pet., 596; Beaston *v.* Farmers' Bank, 12 Pet., 102; U. S. *v.* Herron, 20 Wall., 251; Bayne et al., Trustees, *v.* U. S. 93 U. S., 642.]

222. *Liability of executors, etc.*—Every executor, administrator, or assignee, other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid. *Sec. 3467, R. S. (See sec. 5101, R. S.)*

(See Field *v.* U. S., 9 Pet., 182; Brent *v.* Bank of Washington, 10 Pet., 596.)

223. *Priority of surety who has paid the amount due on the bond of an insolvent principal.*—Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.[1] *Sec. 3468, R. S.*

[1] The priority given in this section to sureties does not apply to sureties on a recognizance in a criminal case. (U. S. *v.* Rydor, 110 U. S., 729; U. S. *v.* Fisher, 2 Cr., 358; U. S. *v.* Hooe, 3 Cr., 73; Prince *v.* Bartlett, 8 Cr., 431; U. S. *v.* Bryan, 9 Cr., 374; Thelusson *v.* Smith, 2 Wh., 396; U. S. *v.* Howland, 4 Wh., 108; Conard *v.* Insurance Company, 1 Pet., 439; Hunter *v.* U. S., 5 Pet., 173; Child *v.* Shoemaker, 1 Wash., 494; U. S. *v.* King, Wall. C. C., 12; Johns *v.* Brodhag, 1 Cr. C. C., 235).

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224. *Distress warrant.*—Whenever any collector of the revenue, receiver of public money, or other officer, who has received the public money before it is paid into the Treasury of the United States, fails to render his account or pay over the same in the manner or within the time required by law, it shall be the duty of the proper Auditor to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they or either of them reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively. *See 3625, R. S.*

225. *Contents.*—The warrant of distress shall specify the amount with which such delinquent is chargeable and the sums, if any, which have been paid. *Sec. 3626, R. S.*

226. *Execution against officer.*—The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer, having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law. *Sec. 3627, R. S.*

227. *Same—Against surety.*—If the delinquent officer absconds, or if goods and chattels belonging to him can not be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides. *Sec. 3628, R. S.*

228. *Amount of levy a lien.*—The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof made in the office of the clerk of the district court

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of the proper district, until the same is discharged according to law. *Sec. 3629, R. S.*

229. *Lands to be sold.*—For want of goods and chattels of a delinquent officer or his sureties, sufficient to satisfy any warrant of distress issued pursuant to the foregoing provisions, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy. *Sec. 3630, R. S.*

230. *Disposal of surplus moneys.*—All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be. *Sec. 3632, R. S.*

231. *Distress warrants to be issued—When and by whom.*—Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the proper Auditor, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections. *Sec. 3633, R. S.*

232. *Same—To be issued against all delinquent fiscal officers and their sureties.*—All the provisions relating to the issuing of a warrant of distress against a delinquent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were herein described and enumerated. *Sec. 3634, R. S.*

233. *Same—Postponement.*—With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement. *Sec. 3635, R. S.*

234. *Bill of complaint—Injunction by United States District Court.*—Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting

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forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States, and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of ten per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court. *Sec. 3636, R. S.*

235. *Injunction by United States Circuit Court.*—When the district judge refuses to grant an injunction to stay proceedings on a distress warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. The same proceedings, subject to the same conditions, shall be had upon such injunction in the circuit court as are prescribed in the district court. *Sec. 3637, R. S.*

236. *Rights of United States not impaired.*—Nothing contained in the provisions of this title relating to distress warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands. *Sec. 3638, R. S.*

MISCELLANEOUS PROVISIONS.

237. *Requisitions—Warrants—Advances.*—Every requisition for an advance of money [1] before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve [2] of this act.

[1] Section 8 of the act of July 31, 1894, has no application to the questions respecting the advance of funds which, under this section, are subject to the decision of the Auditor, with a review by the Secretary of the Treasury. (1 Comp. Dec., 409.)

[2] See par. 196, ante.

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All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury. *Sec. 11, Act of July 31, 1894 (28 Stat. 209).*

238. *Compromise of claims.*—Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.[1] *Sec. 3469, R. S.*

239. *Set-off.*—When any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the

[1] *Compromise of claims.*—Claims against the United States which are disputed by the officers authorized to adjust such accounts may be compromised, and if the claimant voluntarily enters into such a compromise and accepts a smaller sum than the claim and executes a discharge in full for the whole claim, he is bound by the adjustment and can not sue for what he has voluntarily relinquished. (Sweeny *v.* U. S., 17 Wall., 75, 77; Mason *v.* U. S., id., 67; U. S. *v.* George, 6 Blatch., 406.)

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United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amounts so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary, with six per cent interest thereon for the time it has been withheld from the plaintiff.[1] *Act of Mar. 3, 1875 (18 Stat. 481).*

240. *Assignments of claims—Powers of attorneys.*—All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.[2] *Sec. 3477, R. S.*

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[1] *Set-off.*—When a person is both debtor and creditor of the United States, in any form, the officers of the Treasury Department in settling the accounts not only have the power, but are required, in the proper discharge of their duties, to set off the one indebtedness against the other, and to allow and certify for payment only the balance found due on one side or the other. * * * The right of set-off in such cases exists independently of these enactments (sec. 1766, Rev. Stat., and the act of March 3, 1875; 1 Sup. to Rev. Stat. 185), and is founded upon what is now section 236 of the Revised Statutes. (Taggart *v.* U. S., 17 Ct. Cls., 322, 327; McKnight's Case, 13 id., 292; Bonnafon's Case, 14 id., 489; Howes *v.* U. S., 24 id., 170; Reeside *v.* Walker, 11 How., 272, 290.) The power in the matter of set-offs conferred upon the Secretary of the Treasury by the act of March 3, 1875 (18 Stat. 481), is exclusive, and can not be exercised by the courts. (U. S. *v.* Griswold, 30 Fed. Rep., 604.)

[2] The accounting officers of the Treasury will not approve powers of attorney to demand and receive moneys due upon claims against the United States when such powers are not executed in accordance with the provisions of section 3477 of the Revised Statutes. (1 Comp. Dec., 142.) Section 3477 of the Revised Statutes, making null and void all assignments and powers of attorney to collect any claim or demand against the Government (unless the power of attorney is given after the settlement of the claim and the issuance of the warrant in payment) applies to liquidated, certain, and undisputed demands as well as to those which are unliquidated, uncertain, or disputed. (Id., 276.)

Transfers and assignments of claims.—The restrictions of the Comptroller of the Treasury in regard to the allowance of credits to disbursing officers for payments made by them on powers of attorney or other forms of tansfer or assignment being so great as to amount practically to a prohibition of such

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241. *Checks outstanding three years or more to be covered into the Treasury as "Outstanding liabilities."*—At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay

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payments, disbursing officers will refuse to pay the assignee of any claim, except as to assignments authorized by paragraphs 1258 and 1383 of the Army Regulations of 1913.

When claims or vouchers which have been assigned are presented for payment, the holders will be informed that disbursing officers have no authority to make payments to them as assignees, and that payments can only be made to the original persons to whom the money is due. (Decision Asst. Sec. War, Nov. 7, 95—27033, A. G. O., 95. Circ. 13, A. G. O., 1895.)

Assignments of pay by officers and enlisted men.—The assignment of their pay accounts by any officers, after the same become due, is authorized by paragraph 1258, Army Regulations of 1913, and is legal. (3 Second Comp. Dec., 45; id., 47.) Such transfers are accomplished in accordance with paragraphs 1258 and 1383, Army Regulations of 1913.

Attachments.—An attachment can not be enforced against public money in the hands of a disbursing officer of the Government, and he is authorized to pay the Government's creditor without regard to such attempted levy. (1 Comp. Dec., 171; Buchanan *v.* Alexander, 4 How., 20.)

For later specific authority to make payments on assignments by Army officers see Act of March 2, 1913 (37 Stat. 710), par. 647½ post.

The provision of the Revised Statutes (section 3477), making void transfers and assignments of claims against the United States, relates to voluntary assignments, and does not extend to transfers by operation of law, or interfere with the equitable doctrine of subrogation. (Amer. Tob. Co. *v.* U. S., 32 Ct. Cls., 207; 2 Comp. Dec., 49.) While section 3477 of the Revised Statutes declares null and void all powers of attorney given prior to the settlement of a claim and the issuing of a warrant in payment, yet when payments are made upon valid, unrevoked, and undisputed powers of attorney, credit must be given in settlements of the disbursing officer making them. (1 Comp. Dec., 481; id., 119; id., 453.) Under the decisions of the courts the accounting officers are required, notwithstanding the provisions of section 3477 of the Revised Statutes, to credit disbursing officers with payments actually made by them under powers of attorney, provided it is shown that, at the time of such payment, such powers are undisputed and have not been revoked, either by the voluntary action of the principal or by his death. (Id., 142.) Payments may be made to a corporation under a contract entered into by an attorney duly authorized to act for the corporation in the making of such contract. (2 Comp. Dec., 30; id., 295.) See also decision of Secretary of War of November 7, 1895, in Circular 13, A. G. O., 1895.

The assignment of a quartermaster's voucher, unless made "after the allowance of such a claim" and in conformity with all the other requirements of section 3477 of the Revised Statutes, is "absolutely null and void." The exigencies of the war and of the Government service immediately after the war,

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therefor, and into an appropriation account to be denominated "outstanding liabilities."[1] *Sec. 306, R. S.*

242. *Outstanding liabilities.*—The certificate of the Secretary of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by the preceding section, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in the preceding section shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks. *Sec. 307, R. S.*

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which at one time were relied upon to support the practice of paying the assignees of such vouchers, can not be made available in deciding cases now arising. (3 Dig. 2d Comp. Dec., par. 156.)

The mischiefs which this statute was intended to prevent were mainly two: (1) The danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction; (2) that, by a transfer of such claim against the Government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the Departments, the courts, or the Congress as desperate cases, when the reward is contingent on success, so often suggest. In Spofford *v.* Kirk (97 U. S., 490) the Supreme Court had said that the greater of the two evils was the possible combination of interests and influences in the prosecution of claims which might have no real foundation. (Goodman *v.* Niblack, 102 U. S., 560; Bailey *v.* U. S., 109 U. S., 438; Milliken *v.* Barrow, 65 Fed. Rep., 888, 892.)

The provisions of section 3477 of the Revised Statutes, prohibiting and making void transfers of any claim against the United States before the allowance of such claim, apply only to claims existing at the time of the transfer, in the form of a right to demand money from the United States, and not to cases where at the very inception of the transaction out of which a claim against the United States may arise, one party assigns to another the contingent profits he hopes to make, but which do not then exist, and can only be secured by the loan of the assignee's money to the assignor. (Milliken *v.* Barrow, 65 Fed. Rep., 888.)

The word "claim" as used in section 3477, Revised Statutes, which provides that "all transfers and assignments made of any claim upon the United States * * * shall be absolutely null and void" unless made as prescribed therein, comprehends all demands against the United States for the payment of money whether liquidated or unliquidated; and an assignment of a judgment against the United States, made before the issuing of a warrant for the payment thereof, is within the meaning of the statute and void. (4 Comp. Dec., 196; I id., 276.) The provisions of section 3477, Revised Statutes, touching transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims or any claim about which no question is made as to its validity or extent. (XVII Opin. Att. Gen., 545; XXI id., 75; XX id., 578.)

[1] When a claim passes into the form of checks, its legal character changes from that of a demand for goods sold and delivered to a claim represented by the checks given in liquidation of the original demand. The fund established by section 306, Revised Statutes, bears upon it the impress of a trust and the statutes of limitation can not be set up against money credited to the claimant in the permanent appropriation for outstanding liabilities. Such money is held as a trust fund payable on demand without limit of time. (32 Ct. Cls., 30; U. S. *v.* Taylor, 104 U. S., 216.)

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243. *Payment of checks the amounts of which have been covered into "Outstanding liabilities."*—The payee or the bona fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. *Sec. 308, R. S.*

244. *Balances of disbursing officers' accounts remaining unchanged for three years to be covered into the Treasury.*—The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit. *Sec. 309, R. S.*

(For provisions of law requiring annual reports to the Secretary of the Treasury by the Treasurer and Assistant Treasurers of all balances unchanged in disbursing officers' accounts for three years or more and by disbursing officers of all checks outstanding and unpaid for same period, see par. 183, ante.)

245. *Lost checks—Issuance of duplicates.*—Whenever any original disbursing officer's check is lost, stolen, or destroyed, the Secretary of the Treasury may authorize the officer issuing the same, after the expiration of six months and within three years from the date of such disbursing officer's check, to issue a duplicate thereof upon the execution of such bond to indemnify the United States as the Secretary of the Treasury may prescribe: *Provided*, That when such original disbursing officer's check does not exceed in amount the sum of fifty dollars the Secretary of the Treasury may authorize the issuance of a duplicate at any time after the expiration of thirty days and within three years from the date of such disbursing officer's check: *Provided further*, That whenever any original check or warrant of the Post-Office Department has been lost, stolen, or destroyed the Postmaster-General may authorize the issuance of a duplicate thereof, at any time within three years from the date of such original check or warrant, upon the execution by the owner thereof of such bond of indemnity as the Postmaster-General may prescribe: *And provided further*, That when such original check or warrant does not

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exceed in amount the sum of fifty dollars and the payee or owner is, at the date of the application, an officer or employee in the service of the Post-Office Department, whether by contract, designation, or appointment, the Postmaster-General may, in lieu of an indemnity bond, authorize the issuance of a duplicate check or warrant upon such an affidavit as he may prescribe, to be made before any postmaster by the payee or owner of an original check or warrant. *Sec. 3646, R. S., as amended by Act of Feb. 23, 1909 (35 Stat. 643).*

In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued is dead or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury may prescribe, to state an account in favor of the owner of such original check for the amount thereof and to charge such amount to the account of such officer or agent: *Provided*, That in case a check drawn by any officer or agent of the Post-Office Department is lost, stolen, or destroyed a duplicate thereof may be issued under regulations prescribed by the Postmaster-General, as set forth in section thirty-six hundred and forty-six. *Sec. 3647, R. S., as amended by Act of Feb. 23, 1909 (35 Stat. 643).*

[For method of procedure in case a check has been lost, destroyed, or stolen, see pars. 602 and 607, A. R., 1913.]

246. *Certification of Treasury records—Transcripts.*—The transcripts from the books and proceedings of the Department of the Treasury, and the copies of bonds, contracts, and other papers, provided for in section eight hundred and eighty-six of the Revised Statutes,[1] shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department. *Sec. 17, Act of July 31, 1894 (28 Stat. 210), as amended by sec. 10, Act of Mar. 2, 1895 (28 Stat. 809).*

247. *Certain transcripts to be admitted in evidence.*—When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Secretary or an Assistant Secretary of the Treasury and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by such auditor to be true

[1] Paragraph 247, post.

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copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit. *Sec. 886, R. S., as amended by sec. 17, Act of July 31, 1894 (28 Stat. 210), and sec. 10, Act of Mar. 2, 1895 (28 Stat. 809).*

248. *Special agents, employment of.*—Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve. *Sec. 3614, R. S.*

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CHAPTER VI.

POSTAL LAWS.

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249. *The Postmaster-General and others in postal service to take an oath.*—Before entering upon the duties of his office and before he shall receive any salary the Postmaster-General and each of the persons employed in the postal service shall respectively take and subscribe before some magistrate or other competent officer the following oath: "I, A. B., do solemnly swear (or affirm) that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that I will support the Constitution of the United States; so help me God." *Sec. 391, R. S., as amended by sec. 15, Act of Mar. 5, 1874 (18 Stat. 19).*

250. *Oath may be taken before military officer.*—This oath or affirmation may be taken before any officer, civil or military, holding a commission under the United States, and such officer is hereby authorized to administer and certify such oath or affirmation. *Sec. 392, R. S., as amended by sec. 15, Act of Mar. 5, 1874 (18 Stat. 20).*

251. *Soldiers' letters.*—The Postmaster-General may, however, provide by regulation, for transmitting unpaid and duly certified letters of soldiers, sailors, and marines in the service of the United States to their destination, to be paid on delivery. *Sec. 9, Act of Mar. 3, 1879 (20 Stat. 358).*

252. *Official letters.*—It shall be lawful to transmit through the mail, free of postage, any letters, packages, or other matters relating

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exclusively to the business of the Government of the United States: *Provided*, That every such letter or package to entitle it to pass free shall bear over the words "Official business" an endorsement showing also the name of the department, and, if from a bureau or office, the names of the department and bureau or office, as the case may be, whence transmitted. *Sec. 5, Act of Mar. 3, 1877 (19 Stat. 335).*

[These envelopes are for use in domestic correspondence only, and will not cover the transportation of letters to foreign countries, upon which postage stamps must be used. (See paragraphs 834–839, Army Regulations, 1913, as to the use of penalty envelopes.)]

253. *Same.*—Whoever shall make use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than three hundred dollars. *Sec. 227, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1134).*

254. *Departments to procure envelopes.*—For the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United States to provide for itself and its subordinate offices the necessary envelopes; and in addition to the indorsement designating the department in which they are to be used, the penalty for the unlawful use of these envelopes shall be stated thereon. *Sec. 6, Act of Mar. 3, 1877 (19 Stat. 336).*

255. *Extension of franking privilege.*—The provisions of the fifth and sixth sections of the act entitled "An act establishing post routes, and for other purposes" approved March third, eighteen hundred and seventy-seven, for the transmission of official mail matter, be, and they are hereby, extended to all officers of the United States Government, not including members of Congress, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which or officer from whom the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail matter of the Smithsonian Institution. *Sec. 3, Act of July 5, 1884 (23 Stat. 158).*

256. *Return penalty envelopes.*—Any Department or officer authorized to use the penalty envelopes may inclose them with return address to any person or persons from or through whom official information is desired, the same to be used only to cover such official information, and indorsements relating thereto. *Id.*

257. *Registration of mail, Executive Departments.*—Any letter or packet to be registered by either of the Executive Departments, or bureaus thereof, or by the Agricultural Department, or by the Public Printer, may be registered without the payment of any registry fee; and any part paid letter or packet addressed to either of said depart-

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ments or bureaus may be delivered free; but where there is good reason to believe the omission to prepay the full postage thereon was intentional, such letter or packet shall be returned to the sender: *Provided further*, That this act shall not extend or apply to pension agents or other officers who receive a fixed allowance as compensation for their services, including expenses of postages. And section thirty-nine hundred and fifteen of the Revised Statutes of the United States, so far as the same relates to stamps and stamped envelopes for official purposes, is hereby repealed. *Sec. 3, Act of July 5, 1884 (23 Stat. 158).*

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CHAPTER VII.

THE DEPARTMENT OF JUSTICE—HABEAS CORPUS—THE COURT OF CLAIMS, ETC.

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258. *Examination of titles.*—No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title,[1] nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.[1] *Sec. 355, R. S.*

259. *Emergency purchases.*—In case of emergency when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five of the Revised Statutes shall not be applicable in such cases. *Joint Res. No. 21, of Apr. 11, 1898 (30 Stat. 737).*

260. *Questions of law to be sent to the Attorney-General.*—Whenever a question of law arises in the administration of the Department of War or the Department of the Navy, the cognizance of which is not given by statute to some other officer from whom the head of the Department may require advice, it shall be sent to the Attorney-General, to be by him referred to the proper officer in his Department, or otherwise disposed of as he may deem proper.[2] *Sec. 357 R. S.*

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[1] The Attorney-General in certifying the title of land purchased by the Government must look at the question as one of pure law, and can not relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. (VI Opin. Att. Gen., 432. See the chapters entitled the Public Lands and Contracts and Purchases. See, also, I Comp. Dec., 348.)

[2] The Attorney-General will only give official opinions on questions of law arising on facts which are authoritatively stated by a head of Department. (X Opin. Att. Gen., 267.) He has no authority to settle questions of fact, nor to give advice on questions of law, except for the assistance of the officer calling for his opinion on points stated. He takes the facts as they are stated to him and predicates his opinion on them. (III id., 309.) It is not the duty of the Attorney-General to give opinions on questions of fact, nor to review the proceedings of a court-martial in search of questions of law. (V id., 626.)

The Attorney-General will not give a speculative opinion on an abstract question of law, which does not arise in any case presented for the action of an Executive Department. (XI id., 189.) Nor will he review the opinion of

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261. *Opinions of Attorney-General.*—The Attorney-General shall give his advice and opinion upon questions of law, whenever required by the President. *Sec. 354, R. S.*

262. *Head of Department may require opinion.*—The head of any Executive Department may require the opinion of the Attorney-General on any questions of law arising in the administration of his Department.[1] *Sec. 356, R. S.*

263. *The Department of Justice to render opinions.*—The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section three hundred and sixty-three. *Sec. 361, R. S.*

264. *Attorney-General to provide counsel.*—Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service. *Sec. 364, R. S.*

265. *Published opinions of the Attorney-General.*—The Attorney-General shall from time to time cause to be edited, and printed at the Government Printing Office, an edition of one thousand copies of such of the opinions of the law officers herein authorized to be given as he may deem valuable for preservation in volumes, which shall be, as to size, quality of paper, printing, and binding, of uniform style and appearance, as nearly as practicable, with volume eight of such opinions, published, by Robert Farnham, in the year eighteen hundred and sixty-eight. Each volume shall contain proper

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a former Attorney-General, unless a proper case is presented therefor, and submitted by the head of a Department. (Id.)

Where an official opinion from the Attorney-General is desired on questions of law arising on any case, the request should be accompanied by a statement of the material facts in the case, and also the precise questions on which advice is wanted. (XVI id., 367. See note to paragraph 265, post.)

[1] The Attorney-General is not authorized to give an official opinion in any case, except on the call of the President or some one of the heads of Departments. (1 Opin. Att. Gen., 211.) Subordinate officers of the Government who desire an official opinion of the Attorney-General must seek it through the head of the Department to which they are accountable. (Id.)

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headnotes, a complete and full index, and such footnotes as the Attorney-General may approve. Such volumes shall be distributed in such manner as the Attorney-General may from time to time prescribe.[1] *Sec. 383, R. S.*

266. *Habeas corpus.*—The Supreme Court and the [circuit[2] and] district courts shall have power to issue writs of habeas corpus.[3] *Sec. 751, R. S.*

267. *Same.*—The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty. *Sec. 752, R. S.*

268. *Conditions on which the writ may issue.—The writ of* habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or

[1] The opinions of successive Attorneys-General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice. (VI Opin. Att. Gen., 326.) The opinion of the Attorney-General for the time being is, in terms, advisory to the Secretary who calls for it; but it is obligatory as the law of the case unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it be by the latter overruled. (VII id., 692.) Although the acts prescribing the duties of the Attorneys-General do not declare the effect of their advice, it has been the practice of the Departments to heed it. It has been found greatly advantageous, if not absolutely necessary, to have uniformity of action upon analogous questions and cases; and that result is more likely to be attained under the guidance of a single Department, constituted for the purpose, than by a disregard of its opinions and advice. (V id., 97.)

[2] Circuit courts were abolished by the Judicial Code, Act of Mar. 3, 1911 (36 Stat. 1087, 1169).

[3] The Supreme Court may issue the writ in virtue of its original jurisdiction only in cases affecting ambassadors, other public ministers, and consuls, or in those to which a State is a party. (Ex parte Hung Hang, 108 U. S., 552.) In the exercise of its appellate jurisdiction, it may issue the writ for the purpose of reviewing the judicial decision of some inferior officer or court. (Id., 553; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Watkins, 7 Pet., 568; Ex parte Wells, 18 How., 307, 328; Ex parte Yerger, 8 Wall, 85; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, 100 U. S., 371.) Application to the Supreme Court for the issue of the writ must show that the case is within its jurisdiction. (In re Milburn, 9 Peters, 704.)

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unless it is necessary to bring the prisoner into court to testify.[1] *Sec. 753, R. S.*

269. *How application for writ shall be made.*—Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application. *Sec. 754, R. S.*

270. *Duty of court when application is made.*—The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.[2] *Sec. 755, R. S.*

271. *Duty of person to whom writ is directed.*—Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a

[1] A justice of the Supreme Court may issue the writ in any part of the United States where he happens to be, and may make it returnable to himself, or may refer it to the court for determination. (Ex parte Clarke, 100 U. S., 399, 403.) The writ can not be made to perform the function of a writ of error. (Ex parte Virginia, 100 U. S., 339; Ex parte Reed, id., 13, 23.) The writ may be used in connection with the writ of certiorari to determine whether the court below acted with jurisdiction. (Ex parte Lange, 18 Wall., 163; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, id., 371.) This section does not require that the law therein mentioned shall be by express act of Congress. Any obligation fairly and properly inferable from the Constitution, or any duty of a United States officer to be derived from the general scope of his duties, is a "law" within the meaning of the statute. (Cunningham *v.* Neagle, 135 U. S., 1. See also Ex parte Dorr, 3 How., 103; Ex parte Barnes, 1 Sprague, 133; Ex parte Bridges, 2 Woods, 428.)

[2] In the courts of the United States the practice prevailing at the common law at the time of the adoption of the Constitution is still pursued. The writ may be granted in term time or by a justice or judge of a Federal court, having jurisdiction to issue the writ, in vacation, or at any time, and may be issued by a justice of the Supreme Court in any part of the country, wherever he may be. (Hurd, Hab. Corp., 214; U. S. *v.* Clarke, 100 U. S., 403.) The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the grounds presented in the petition, the prisoner, if brought before the court, would be discharged. (Ex parte Milligan, 4 Wall., 2.) Under the requirements of this section, the writ, though a matter of right, does not issue as a matter of course and may be refused if, upon the showing made in the petition, it appear that the petitioner, if brought into court would be remanded. (In re King, 51 Fed. Rep., 434; In re Jordan, 49 Fed. Rep., 238; In re Haskell, 52 Fed. Rep., 795.) Suspension of the privilege of the writ does not suspend the writ itself. The writ issues as a matter of course; and, on its return, the court decides whether the applicant is denied the privilege of proceeding any further. (Ex parte Milligan, 4 Wall., 2.)

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distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days.[1] *Sec. 756, R. S.*

272. *Same.*—The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party. *Sec. 757, R. S.*

273. *Same.*—The person making the return shall at the same time bring the body of the party before the judge who granted the writ. *Sec. 758, R. S.*

274. *Date for hearing.*—When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time. *Sec. 759, R. S.*

[If the service of the writ be prevented by military force, it will be ordered to be placed on the files of the court, to be served when practicable. (Ex parte Winder, 2 Clifford, 89.)

An order from a subordinate in the War Department to an officer not to obey the writ by the production of the body, is no justification to the officer. (Ex parte Field, 5 Blatchford, C. C., 63.)]

275. *Duty of court when return is made.*—The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.[2] *Sec. 761, R. S.*

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[1] In regard to the duties of an officer upon whom has been served a writ of habeas corpus, as well as for the forms of return, etc., see the Manual for Courts-Martial and the Army Regulations.

[2](6) The purpose of the writ is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the causes of it, and if the alleged cause is unlawful, it must then discharge the prisoner. * * * In the case of a man in the military or naval service, where he is, whether as an officer or private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be quite clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of the subordinate, which necessarily to some extent controls his freedom of will, may be held to be a restraint of his liberty and the party so ordered may seek relief from obedience by means of a writ of habeas corpus. Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it. (Wales *v.* Whitney, 114 U. S., 564, 571.) Where a court-martial has jurisdiction of the person and of the subject-matter and is competent to pass the sentence under which the prisoner is held, its proceedings can not be collaterally impeached, and a writ of habeas corpus can not be made to perform the function of a writ of error. (Ex parte Reed, 100 U. S., 13, 23; Ex parte Kearney, 7 Wheat., 38; Ex parte Watkins, 3 Pet., 193; Ex parte Milligan, 4 Wall., 2; Ex parte Mason, 105 U. S., 696; Ex parte Curtis, 106 U. S., 371; Ex parte Carrl, id., 521; Ex parte Bigelow, 113 U. S., 328; Davis *v.* Beason, 133 id., 333; In re Frederick, 149 id., 70; Smith *v.* Whitney, 116 U. S., 167; U. S. *v.* Grimley, 137 U. S., 147; Johnson *v.* Sayre, 158 U. S., 109; In re Boyd, 49 Fed. Rep., 48; Crossley *v.* California, 168 U. S., 640; Ex parte Lennon, 164 Fed. Rep., 320; In re Lawrence, 84 id., 99.)

Where a medical director in the Navy, against whom charges had been preferred and in whose case a general court-martial had been ordered, was placed in arrest by the Secretary of the Navy, and notified to confine himself to the limits of the city of Washington: *Held*, That this constituted no such restraint of liberty as to sustain a writ of habeas corpus. (Wales *v.* Whitney, 114 U. S., 564.) Where a person is in custody under process from a State court of original jurisdiction for an alleged offense against the laws of such

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276. *Suspension of the privilege of the writ of habeas corpus.*—The privilege of the writ of habeas corpus shall not be suspended,

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State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court has a discretion whether it will discharge him upon a habeas corpus, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court has finally acted upon the case, the circuit court has still a discretion whether, under all the circumstances, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed, by writ of habeas corpus, summarily to determine whether the prisoner is restrained of his liberty in violation of the Constitution of the United States. (Ex parte Royall, 117 U. S., 241, 253; Ex parte Watkins, 3 Pet., 201; Ex parte Bridges, 2 Woods, 428; Ex parte Lange, 18 Wall., 163; In re Kings, 51 Fed. Rep., 434; Ex parte Hanson, 28 Fed. Rep., 127, 131; In re Jordan, 49 Fed. Rep., 238; In re Lawrence, 80 id., 99; Ex parte Lennon, 64 id., 320.) Where a United States marshal in custody for an act done in pursuance of a law of the United States is brought before a Federal court by habeas corpus and discharged, he can not afterwards be tried by the State court. (Cunningham *v.* Neagle, 135 U. S., 1. See, also, In re Boardman, 169 U. S., 39; Baker *v.* Grice, id., 284; Nishimura Ekin *v.* U. S., 142 id., 651, 166 U. S., 391; Iasigi *v.* Van de Surr, 166 U. S., 391.)

Conflict of State and Federal authority.—The writ of habeas is a high prerogative writ known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error to examine the legality of the commitment. (Ex parte Watkins, 3 Pet., 202.) The Federal courts by whom, and the cases in which, it may be issued are described in sections 751, 752, 753, 754, 762, 763, 764, and 765 of the Revised Statutes. Subject to the paramount authority of the National Government, by its own tribunals, to inquire into the legality of custody of prisoners held by the United States courts or officers, the States may inquire into the grounds on which any person in their respective limits is restrained of his liberty. (Robb *v.* Connolly, 111 U. S., 624.) A State court has no jurisdiction by habeas corpus to release a prisoner held by order of Federal court. (Ableman *v.* Booth, 21 How., 506.) And a judicial officer of a State can not, by means of a writ of habeas corpus, take and discharge a person held by or under color of authority of the United States. If it appear upon the return to a writ of habeas corpus that the person is detained under color of the authority of the United States, the State court has no further jurisdiction. (Tarble's case, 13 Wall., 397.) We do not question the authority of the State court or judge who is authorized by the laws of the State to issue the writ of habeas corpus to issue it in any case where the party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States. The court or judge has a right to inquire, in this mode of proceeding, for what cause and by what authority the prisoner is confined within the territorial limits of the State sovereignty. And it is the duty of the marshal or other person having the custody of the prisoner to make known to the judge or court, by a proper return, the authority by which he holds him in custody. * * * But after the return is made and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. * * * And although, as we have said, it is the duty of the marshal or other person holding him to make known, by a proper return, the authority under which he detains him, it is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other Government. And consequently it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a habeas corpus issued under State authority. No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. And if the authority of a State, in the form of a judicial process or otherwise, should attempt to control the marshal or other authorized officer or agent of the United States, in any respect in the custody of his prisoner, it would be his duty to resist it and to call to his aid any force that might be necessary to maintain the authority of law against illegal interference. No judicial process, whatever form it may assume, can have

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unless when in cases of rebellion or invasion the public safety may require it.[1] *Art. 1, sec. 9, par. 2, Constitution of United States.*

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any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it was issued, and an attempt to enforce it beyond these boundaries is nothing less than lawless violence. (Ableman *v.* Booth, 21 How., 506.) A State judge has no jurisdiction to issue a writ of habeas corpus for a prisoner in custody of an officer of the United States if the fact of such custody is known to him before issuing the writ; and if such fact appears on the return to the writ, all further proceedings by him are void. And if the United States officer resist the enforcement of the State writ and is imprisoned therefor, he will be discharged by the Federal court. (Ex parte Sifford, 5 Am. Law Reg., O. S., 659.) A military officer of the United States is not bound to produce the body of an enlisted soldier in answer to a writ of habeas corpus issued from a State court or judge. (In re Neill, 8 Blatch., 166.) The return of a military officer to a writ of habeas corpus need not be on oath. (In re Neill, 8 Blatch., 165.) The validity of the enlistment of a soldier can not be inquired into by a State court by the issue of a writ of habeas corups, and an officer of the Army may properly refuse to discharge an enlisted man in his command upon the order of a State court. (In re Ferrand, 1 Abbot, 140, 147.)

An officer or agent of the United States engaged in the performance of a duty arising under the laws and authority of the United States is not liable to a criminal prosecution in the courts of a State for acts done by him in his official capacity. (In re Waite, 81 Fed. Rep., 359.) An officer who, in the performance of what he conceives to be his official duty, transcends his authority and invades private rights, is answerable therefor to the Government under which he acts, and to individuals injured by his action; but where there is no criminal intent he is not liable to answer the criminal process of another Government. (In re Lewis, 83 id., 159; in re Neagle, 135 U. S., 1.) Federal courts have authority in habeas corpus proceedings to inquire into the guilt or innocence of persons committed on preliminary examination by a State tribunal on a criminal charge for acts done in the service of the United States, so far as to determine whether the acts were done wantonly and with a criminal intent. (Id., 159.) When an officer of the United States is sought to be held in a State court for punishment for acts done in the performance of his duty to the United States, it is not a sufficient reason for refusing his release upon habeas corpus that he may raise the question of his immunity in the State court, and carry the matter by writ of error to the United States Supreme Court, if necessary, since the operations of the Federal Government would, in the meantime, be obstructed by the confinement of its officer. (In re Waite, 81 Fed. Rep., 359.)

[1] The *privilege* of the writ must here mean the right to the writ. (Paschal, 141.) The power to issue the writ is not privilege, to ask for it is. (Id.)

It would seem, as the power is given to Congress to suspend the privilege of the writ in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body. (Martin *v.* Mott, 12 Wheat., 19; Ex parte Milligan, 4 Wall., 2; VIII Opin. Att. Gen., 365.) The privilege of the writ was suspended by the act of March 12, 1863 (12 Stat. 755), which contained the following requirement: "During the present rebellion the President of the United States whenever, in his judgment the public safety may require it, is authorized to suspend the writ of habeas corpus, in any case, throughout the United States or any part thereof." (Ex parte Milligan, 4 Wall., 2, 115–116; Vallandigham's trial, 1 id., 243.) On September 15, 1863, the President, by proclamation, suspended the privilege of the writ during the rebellion, throughout the United States, in all cases "when, by the authority of the President of the United States, the military, naval, and civil officers of the United States, or any of them, held persons under their command or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen, enrolled, drafted, or mustered or enlisted in or belonging to the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the Rules and Articles of War, or the rules or regulations prescribed for the military or naval service by authority of the President of the United States, or for resisting a draft, or for any other offense against the military or naval service. (See, also, United States *v.* Hamilton, 3 Dall., 17; Hepburn et al. *v.* Ellzey, 2 Cr., 445; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Tobias Watkins, 3 Pet., 192; Ex parte Milburn, 9 Pet., 704; Holmes *v.* Jen-

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277. *The Court of Claims.*—The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however*, That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.[1] *Sec. 145, Act of Mar. 3, 1911, Judicial Code (36 Stat. 1136).*

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nison et al., 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 2; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85 Tarble's case, 13 Wall., 397; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396.)

[1] The Court of Claims was established by the acts of February 24, 1855 (10 Stat., 612); March 3, 1863 (12 Stat., 765), and May 8, 1872 (17 Stat., 85). Its procedure is now governed by the Judicial Code, act of March 3, 1911 (36 Stat., 1087). This court was created with a view to give legal redress to the citizen as against the Government where he would have had legal redress as against another citizen. It is a curious fact, not generally known, that the example of Prussia and the German States in guarding the private rights of persons by subjecting the Government, in matters of account, to the judicial power of

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278. *Jurisdiction of district courts over claims.*—Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the

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ordinary courts of justice, led to the establishment of the Court of Claims. (Brown *v.* U. S., 5 Ct. Cls., 571, 577.) The provisions of the act of March 3, 1863, authorizing the Court of Claims to hear and determine, without a jury, claims against Government with set-offs, is not unconstitutional. (McElrath *v.* U. S., 102 U. S., 426.)

A claimant presenting a claim founded upon a law of Congress has a legal right, under section 1059, Revised Statutes, to a definitive adjudication; and the power of the court to afford that can not be considered as interfered with by anything short of a lodgment of the power of definitive adjudication in some other tribunal or officer. (Thomas *v.* U. S., 16 Ct. Cls., 522.) The rejection of a claim by the accounting officers leaves the party to pursue his remedy at law, viz, an action in this court, though he may have accepted the portion allowed. (Longwill *v.* U. S., 17 Ct. Cls., 288; U. S. *v.* Kauffman, 96 U. S., 567.)

Regulations of an Executive Department are rules relating to the subjects on which a department acts and are made by its head under an act of Congress conferring that power and thereby giving such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. (Harvey *v.* U. S., 3 Ct. Cls., 38.) By the term "any regulation" is doubtless intended any regulation within the lawful discretion of the head of an executive department. * * * When Congress permits regulations to be formulated and published and carried into effect year after year, the legislative ratification must be implied. (Maddox *v.* U. S., 20 Ct. Cls., 193, 198.)

The jurisdiction of the Court of Claims is confined to suits arising from contracts express or implied. (Langford *v.* U. S., 101 U. S., 341.) The United States can not be sued in the Court of Claims on equitable considerations merely. (Bonner *v.* U. S., 9 Wall., 156.) The language of the statutes which confer jurisdiction on the Court of Claims excludes, by the strongest implication, demands against the Government founded on torts. In such cases, where it is proper for the Nation to furnish a remedy, Congress has wisely reserved the matter for its own determination. (Gibbons *v.* U. S., 8 Wall., 269, 275; Reed *v.* U. S., 11 Wall., 591; Langford *v.* U. S., 101 U. S., 341. See, also, paragraphs 339–353, post.)

Contracts.—The Court of Claims, in the construction and enforcement of contracts, is bound to apply the principles which govern like contracts between individuals. (U. S. *v.* Smoot, 15 Wall., 36; Curtis *v.* U. S., 2 Ct. Cls., 144; Brooke *v.* U. S., id., 180.) All questions of salary are questions of contract, and whether the salary is fixed by law, or by order of a department under authority of law, the Government contracts to pay the officer his salary, and, failing to do so, a suit therefor may be maintained in this court, whether the case arises under a revenue act or any other. (Patton *v.* U. S., 7 Ct. Cls., 362.) The United States can no more discharge its contracts by such performance than can an individual person do so. Congress may fail to appropriate, in whole or in part, the money required for payment of a public creditor, and thus leave the public officer without authority to draw money from the Treasury for that purpose, but the indebtedness and liability remain in force. (Mitchell *v.* U. S., 18 Ct. Cls., 281, 287; Graham *v.* U. S., 1 id., 380; Collins *v.* U. S., 15 id., 22; French *v.* U. S., 16 id., 419.) An officer who has been wholly retired from the service, but in whose case the order of retirement has been revoked by the President, who directs his name to be placed on the retired list, is an officer de facto, and though illegally on such retired list, money paid him by way of salary, so long as he holds the office in good faith, can not be recovered back. When one claiming to be an officer renders no service and holds no official relations with the Government, money paid him for service may be recovered back. (Miller *v.* U. S., 19 Ct. Cls., 338.) In an action in the Court of Claims to recover a balance claimed to be due on pay account, the United States can set up, as a counter claim, an alleged overpayment to him on account of pay, and can have judgment for its collection. (U. S. *v.* Burchard, 125 U. S., 176; McElrath *v.* U. S., 102 U. S., 426.)

An officer can only bind the Government by acts which come within a just exercise of his official power. (Hunter *v.* U. S., 5 Pet., 173, 178; The Floyd Ac-

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United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or

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ceptances, 7 Wall., 666; Whiteside *v.* U. S., 93 U. S., 247.) Unless the Government has ratified a contract of an officer in excess of his authority, or received the benefit of it, it is not liable. The ratification of some of a series of unauthorized acts is not to be construed to be an approval of any not specified. (Pitcher *v.* U. S., 1 Ct. Cls., 7; De Celis *v.* U. S., 13 Ct. Cls., 117.)

Implied contracts.—To constitute an implied contract "there must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake." (Knote *v.* U. S., 95 U. S., 149, 156.) A contract to reimburse is implied when the Government takes private property for public use. Such a taking of private property by the Government when the emergency of the public service in time of war, or impending public danger, is too urgent to admit of delay, is everywhere regarded as justified, if the necessity for the use of the property is imperative and immediate and the danger, as heretofore described, is impending; and it is equally clear that the taking of such property, under such circumstances, creates an obligation on the part of the Government to reimburse the owner to the full value of the service. Private rights, under such extreme and imperious circumstances, must give way, for the time, to the public good, but the Government must make full restitution for the sacrifice. (U. S. *v.* Russell, 13 Wall., 623, 629.) Beneficial volunteer service does not raise an implied contract, unless there has been an inducement, agreement, or ratification. (Boston *v.* The District of Columbia, 19 Ct. Cls., 31.) The court has jurisdiction of a suit by a patentee for the royalty agreed to be paid for the use of his invention by an authorized officer of the Government. (Burns *v.* U. S., 12 Wall., 246.)

A contract is implied from the fact that the Government manufactured a patented military device, without market value, on the solicitation of the patentee, that it should pay for the right to use the invention. (Palmer *v.* U. S., 128 U. S., 262.) The United States may be sued for use of a patented invention by its officers for its benefit if the right of the patentee is acknowledged. (Hollister *v.* Benedict Manufacturing Co., 113 U. S., 59; U. S. *v.* Burns, 12 Wall., 246.) When an officer of the Government is properly assigned to the work of devising something to be used in the public service, the Government meeting the expenses and paying the officer his usual salary, the Government is not liable for royalty on the invention, though it was made by the officer previous to the time he was assigned to the work, if the labor and expense of perfecting it was borne by the Government. (Solomons *v.* U. S., 22 Ct. Cls., 335; 21 id., 479.) The policy of the War Department of late years toward inventors has been one of neutrality, neither denying nor admitting legal rights, but taking inventions to perfect the Government arms, leaving inventors free to seek redress without prejudice before other tribunals than an Executive Department. (Berdan *v.* U. S., 26 Ct. Cls., 48, 60. See also Clyde *v.* U. S., 13 Wall., 38; U. S. *v.* Russell, 13 Wall., 623; U. S. *v.* Bostwick, 94 U. S., 53; Fichera's case, 9 Ct. Cls., 254; Macauley's case, 11 Ct. Cls., 693; Clark's case, 11 Ct. Cls., 698; Roman et al. *v.* U. S., 11 Ct. Cls., 761; Campbell's case, 13 Ct. Cls., 470.)

The right of set-off did not exist at common law, and is everywhere founded upon statutory regulation. (Tillou *v.* U. S., 1 Ct. Cls., 454; 2 id., 588, and U. S. *v.* Eckford, 6 Wall., 484.) State laws in such a case do not constitute the rule of decision, but the question arises, exclusively, under the act of Congress; and no local law nor usage can have any influence in its determination. (Id.; Reeside *v.* Walker, 11 How., 272, 290.)

Under this provision relief has been afforded to a paymaster who was attacked and robbed by highwaymen. (Broadhead *v.* U. S., 19 Ct. Cls., 125.) To a disbursing officer for loss by the failure of a national bank, which was a designated depository. (Hobbs *v.* U. S., 17 id., 189.) To a disbursing officer for money stolen from a safe. (Scott *v.* U. S., 18 id., 1; Clark *v.* U. S., 11 id., 698; Howell *v.* U. S., 7 id., 512.) To a quartermaster for money lost from his person, the money being carried in the way such officers usually carry it on similar occasions, under circumstances utterly free from suspicion and after diligent efforts

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unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court.[1] *Par. 20, sec. 24, id.*

279. *Set-off, counterclaim, etc.*—Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judg-

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had been made to recover the same. (Whittlesey *v.* U. S., 5 id., 452.) To a quartermaster for money stolen from his room, due precaution for its safety having been taken. (Malone *v.* U. S., 5 id., 486; Norton *v.* U. S., 2 id., 523.) To a paymaster for money contained in a treasure box stolen by soldiers at a garrison. (Glenn *v.* U. S., 4 id., 501.) To an engineer officer for money captured by the enemy. (Prince *v.* U. S., 3 id., 209.) To a paymaster for funds and vouchers captured by the enemy. (Ruggles *v.* U. S., 2 id., 520; Moore *v.* U. S., id., 522; Beckwith *v.* U. S., id., 526; Hubbell *v.* U. S., id., 527.) To an acting commissary of subsistence for money expended, the expenditures being covered by vouchers captured by the enemy. (Murphy *v.* U. S., 3 id., 212.)

Relief has been denied to a paymaster for money embezzled by a clerk, the loss having been made good by the disbursing officer, under pressure, but without protest on his part. (Hall *v.* U. S., 9 Ct. Cls., 270.) In the case of a paymaster for funds stolen by an orderly detailed for messenger duty in his office. (Holman *v.* U. S., 11 id., 642.) To a collector of revenue, for the value of revenue stamps stolen from his office, during his absence therefrom, said collector not being a disbursing officer within the meaning of the statute. (Stapp *v.* U. S., 4 id., 219.) To an acting commissary of subsistence in Dakota, for money alleged to have been stolen, no testimony having been offered in the case but his own. (Pattee *v.* U. S., 3 id., 397.) In a case arising under this provision, the petitioner is a competent witness to prove the amount of money lost, if the loss itself be established by other testimony. (U. S. *v.* Clark, 96 U. S., 37; Hobbs *v.* U. S., 17 Ct. Cls., 189; Scott *v.* U. S., 18 id., 1; Broadhead *v.* U. S., 19 id., 125; Hoyle *v.* U. S., 21 id., 300.) An acting commissary of subsistence is entitled to relief under the provisions of this statute, and it is not necessary that the officer should have given a bond to entitle him to relief. (Wood *v.* U. S., 25 id., 98.) It was held by the Supreme Court in U. S. *v.* Smith (14 Ct. Cls., 114, and 105 U. S., 620) that the statute of limitation applied to cases arising under this section. (See also U. S. *v.* Clark, 96 U. S., 37; U. S. *v.* Anderson, 9 Wall., 56; Pugh *v.* U. S., 13 Wall., 633; U. S. *v.* Kimball, 13 Wall., 636; U. S. *v.* Crussell, 14 Wall., 1; Slawson *v.* U. S., 16 Wall., 310.)

[1] An act to codify, revise, and amend the laws relating to the judiciary was passed March 3, 1911, and took effect January 1, 1912. The title of the act is: The Judiciary, but it is generally referred to as The Judicial Code of the United States. Senate Document No. 1141, Sixty-second Congress, third session, recites the act in full and gives extensive modifications and remarks under each section. The act can best be briefly described by naming the headings of the 14 chapters. These are as follows: District Courts—organization; District Courts—jurisdiction; District Courts—removal of causes; District Courts—miscellaneous provisions; District Courts—districts, and provisions applicable to particular States; Circuit Courts of Appeals; The Court of Claims; The Court of Customs Appeals; The Commerce Court; The Supreme Court; Provisions common to more than one court; Juries; General provisions; Repealing provisions.

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ment of such court and be enforced as other judgments in such court are enforced. *Sec. 146, id.*

280. *Decree in case of loss by a disbursing officer.*—Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts. *Sec. 147, id.*

281. *Restriction on cases which may be filed.*—No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States. *Sec. 154, id.*

282. *Time limit for filing claims.*—Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. *Sec. 156, id.*

283. *Form of petition.*—The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement

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to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney. *Sec. 159, id.*

284. *Court may call on department for information.*—The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest. *Sec. 164, id.*

285. *Petition must show ground for relief.*—When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein. *Sec. 165, id.*

286. *Costs of taking evidence for claimant to be paid by him.*—When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose. *Sec. 171, id.*

287. *Must be no intent to defraud the United States.*—No claim shall be allowed by the accounting officers under the provisions of the Act of Congress approved June sixteenth, eighteen hundred and seventy-four, or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof. *Sec. 173, id.*

288. *When court may grant a new trial.*—The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law. *Sec. 175, id.*

289. *Losing party to pay cost of printing, etc.*—There shall be taxed against the losing party in each and every cause pending in

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the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States. *Sec. 176, id.*

290. *No interest allowed before judgment.*—No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest. *Sec. 177, id.*

291. *Payment under judgment to be full discharge to United States.*—The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy. *Sec. 178, id.*

292. *Final judgment to bar further demand.*—Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy. *Sec. 179, id.*

293. *Attorney-General to appear for the United States.*—The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counter claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court. *Sec. 185, id.*

294. *Procedure where debtor to United States alleges no settlement within three years.*—Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General

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of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section. *Sec. 180, id.*

295. *Same—Right of appeal.*—The plaintiff or the United States, in any suit brought under the provision of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed. *Sec. 181, id.*

(For Secs. 242 and 243, see pars. 296 and 297, post.)

296. *Right of appeal.*—An appeal to the Supreme Court shall be allowed on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court as provided in section one hundred and seventy-two. *Sec. 242, id.*

297. *Appeal to be taken within ninety days.*—All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct. *Sec. 243, id.*

298. *Court may allow costs in certain cases.*—If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court. *Sec. 152, id.*

299. *Patents.*—Whenever an invention described in and covered by a patent of the United States shall hereafter be used by the United States without license of the owner thereof or lawful right to use

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the same, such owner may recover reasonable compensation for such use by suit in the Court of Claims: *Provided, however*, That said Court of Claims shall not entertain a suit or reward [award] compensation under the provisions of this Act where the claim for compensation is based on the use by the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further*, That in any such suit the United States may avail itself of any and all defenses, general or special, which might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further*, That the benefits of this Act shall not inure to any patentee, who, when he makes such claim is in the employment or service of the Government of the United States; or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service. *Act of June 25, 1910 (36 Stat. 851)*.

300. *Jurisdiction over offenses committed on high seas.*—The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought. *Sec. 41, Act of Mar. 3, 1911, Judicial Code (36 Stat. 1100)*.

301. *Seizures on the high seas.*—Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided. *Sec. 45, id.*

302. *Condemnation of property captured on high seas, etc.*—Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted. *Sec. 46, id.*

303. *Vessels entering closed port or coming from State in insurrection.*—Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or

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section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. *Sec. 47, id.*

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CHAPTER VIII.

THE DEPARTMENT OF THE NAVY—THE MARINE CORPS.

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304. *Duties on shore.*—The Marine Corps shall be liable to do duty in the forts and garrisons of the United States, on the seacoast, or any other duty on shore, as the President, at his discretion, may direct.[1] *Sec. 1619, R. S.*

305. *Marine Corps subject to Articles of War when serving with Army.*—The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army.[1] *Sec. 1621, R. S.*

306. *Detail of naval officers.*—The President may detail, temporarily, three competent naval officers for the service of the War Department in the inspection of transport vessels, and for such other services as may be designated by the Secretary of War. *Sec. 1437, R. S.*

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[1] See A. W. 122.

[1] See A. W. 78; 28 Op. Att. Gen., 15; published in Circular 66, War Dept., 1909; G. O. No. 7 War Dept., 1909; G. O. No. 161, War Dept., 1909.

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CHAPTER IX.

THE REVISED STATUTES[1]—THE STATUTES AT LARGE—THE ARMY REGULATIONS—THE ARMY REGISTER.

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307. *Commissioners to revise and consolidate the General Statutes of the United States.*—The President of the United States is hereby

[1] The Revised Statutes must be accepted as the law on the subjects which they embrace as it existed on the 1st day of December, 1873, and were enacted to present the entire body of the laws in a concise and compact form. When the language of the Revised Statutes is plain and unambiguous, the grammatical structure simple and accurate, and the meaning of the whole intelligible and obvious, a court is not at liberty, by construction, to reproduce the law as it stood before the revision. (U. S. *v.* Bowen, 100 U. S., 508. See also Wright *v.* U. S., 15 Ct. Cls., 80, 86; U. S. *v.* No. Am. Com. Co., 74 Fed. Rep., 145.)

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authorized, by and with the advice and consent of the Senate, to appoint three persons, learned in the law, as commissioners, to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in their nature, which shall be in force at the time such commissioners may make the final report of their doings. *Sec. 1, Act of June 27, 1866 (14 Stat. 74).*

308. *First edition, 1874.*—That the Secretary of State is hereby charged with the duty of causing to be prepared for printing, publication, and distribution the Revised Statutes of the United States enacted at this present session of Congress; that he shall cause to be completed the headnotes of the several titles and chapters and the marginal notes referring to the statutes from which each section was compiled and repealed by said revision; and references to the decisions of the courts of the United States explaining or expounding the same, and such decisions of State courts as he may deem expedient, with a full and complete index to the same.[1] *Sec. 2, Act of June 20, 1874 (18 Stat. 113).*

310. *Printed copies—Evidence.*—When the same shall be completed, the said Secretary shall duly certify the same under the seal of the United States, and when printed and promulgated as hereinafter provided, the printed volumes shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States, and of the several States and Territories.[2] *Id.*

311. *Title of revision of statutes.*—That the revision of the statutes of a general and permanent nature, with the index thereto, shall be printed in one volume, and shall be entitled and labeled "Revised

[1] The Revised Statutes were prepared by commissioners appointed under acts of Congress approved June 27, 1866 (14 Stat. 74), and May 4, 1870 (16 Stat. 96), the latter act providing that the work and revision should be completed within three years from the date of its passage. The act of March 3, 1873 (17 Stat. 579), authorized the appointment of a joint committee of Congress to accept the draft of the revision of laws, so far as the same was completed at the expiration of the time designated for that purpose. (May 4, 1873.) The same statute authorized the existing joint committee to contract with some suitable person or persons to prepare a revision of the statutes, already reported by the commissioners, in the form of a bill to be presented at the opening of the Forty-third Congress. The publication of the first edition of the Revised Statutes was authorized by the act of June 20, 1874. (18 Stat. 113.)

[2] The first edition of the Revised Statutes is a transcript of the original act in the State Department, which became a law June 22, 1874, and is prima facie evidence of the law, but the original is the only conclusive evidence of the exact text of the law. (Wright *v.* U. S., 15 Ct. Cls., 80, 87.) The Revised Statutes must be accepted as the law on the subjects which they embrace as it existed on the 1st day of December, 1873, and were enacted to present the entire body of the laws in a concise and compact form. The incorporation of a particular statutory provision into the revision was a legislative declaration that the law on that subject was as therein provided; and in the absence of any obscurity in the meaning the court can not look to the preexisting statutes to see whether or not they were correctly incorporated. (U. S. *v.* Bowen, 100 U. S., 508; Bates Refrigerating Co. *v.* Sulzberger, 157 U. S., 1; Wright *v.* U. S., 15 Ct. Cls., 80, 86; U. S. *v.* North American Commercial Co., 74 Fed. Rep., 145.) As to the effect of amendments to the Revised Statutes, see U. S. *v.* Jessup (15 Fed. Rep., 790).

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Statutes of the United States;" and the revision of the statutes relating to the District of Columbia; to post-roads, and the public treaties in force on the first day of December, one thousand eight hundred and seventy-three, with a suitable index to each, shall be published in a separate volume, and entitled and labeled "Revised Statutes relating to District of Columbia and Post-Roads. Public Treaties." *Sec. 3, id.*

312. *Certificate to Revised Statutes.*—That the certificate to the printed volume of the Revised Statutes of the United States required by section two of "An act providing for publication of the revised statutes and laws of the United States," approved June twentieth, eighteen hundred and seventy-four, shall be made by the Secretary of State under the seal of the Department of State, and so much of said section as provides that such certificate shall be under the seal of the United States, is hereby repealed. *Act of Dec. 28, 1874 (18 Stat. 293).*

313. *Scope of Revised Statutes.*—The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States. *Sec. 5595, R. S.*

314. *Repeal of acts embraced in revision.*—All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day, no part of which are embraced in said revision, shall not be affected or changed by its enactment.[1] *Sec. 5596, R. S.*

315. *Accrued rights reserved.*—The repeal of the several acts embraced in said revision shall not affect any act done, or any right

[1] Sections 5597, 5598, and 5599, Revised Statutes, provide that the repeal shall not affect rights acquired, suits commenced, offenses committed, or acts of limitation, but that "all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to said repeal may be commenced and prosecuted within the same time as if said repeal had not been made."

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accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof. *Sec. 5597, R. S.*

316. *Arrangement and classification.*—The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed. *Sec. 5600, R. S.*

317. *Acts passed since December 1, 1873, not affected.*—The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith. *Sec. 5601, R. S.*

318. *Second edition (1878)—Evidence.*—That said new edition shall be completed in manuscript by said commissioner by the first day of January, anno Domini eighteen hundred and seventy-eight, and by him presented to the Secretary of State for his examination and approval, who is hereby required to examine and compare the same, as amended, with all the amendatory acts, and, within two months after having been submitted to him, and when the same shall be completed, the said Secretary shall duly certify the same under the seal of the Secretary of State, and when printed and promulgated as herein provided the printed volume shall be legal evidence of the laws therein contained, in all the courts of the United States, and of the several States and Territories, but shall not preclude reference to nor control, in any case of discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three, and said Secretary shall cause fifteen thousand copies of the same to be printed and bound at the Government Printing Office, under the supervision of said commissioner, at the expense of the United States, and without unnecessary delay.[1] *Sec. 4, Act of Mar. 2, 1877 (19 Stat. 269), as amended by Act of Mar. 9, 1878 (20 Stat. 27).*

[1] The second edition of the Revised Statutes was prepared by the Hon. George S. Boutwell, who was appointed commissioner under authority of the act of March 2, 1877 (19 Stat. 268). It is only a new publication; a compilation, containing the original law, with specific amendments incorporated therein according to the judgment of the editor. (Wright *v.* U. S., 15 Ct. Cls., 80.) It did not affect statutes passed between December 1, 1873, and June 22, 1874.

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THE SUPPLEMENTS TO THE REVISED STATUTES.

319. *Supplement of 1891.*—That the publication of the Supplement to the Revised Statutes, embracing the statutes general and permanent in their nature, passed after the Revised Statutes, with references connecting provisions on the same subject, explanatory notes, and citations of judicial decisions, be continued and issued in one volume, to include the general laws of the Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses, with a table of alterations and a general index to the whole, to be prepared and edited by the editor of the existing Supplement, authorized by the joint resolution of June twenty-eighth, eighteen hundred and eighty, numbered forty-four (Supplement to Revised Statutes, page five hundred and eighty-two), to be stereotyped at the Government Printing Office, using the present plates, as far as practicable, with such alterations as may be found necessary, the work and plates and all right and title therein and thereto to be in and fully belong to the Government for its exclusive use and benefit. *Sec. 1, Act of Apr. 9, 1890 (26 Stat. 50).*

320. *Same—Prima facie evidence.*—That the publication herein authorized shall be taken to be prima facie evidence of the laws therein contained, but shall not change nor alter any existing law, nor preclude reference to nor control, in case of any discrepancy, the effect of any original act passed by Congress.[1] *Sec. 3, id.*

THE STATUTES AT LARGE.

321. *Pamphlet and bound copies, evidence.*—The pamphlet copies of the statutes and the bound copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained in all the courts of the United States and of the several States therein. The said pamphlet and the Statutes at Large shall contain all laws, joint and concurrent resolutions passed by Congress, and also all conventions, treaties, proclamations, and agreements. *Sec. 73, Act of Jan. 12, 1895 (28 Stat. 615).*

[1] The volume published in conformity to the authority conferred by this statute was published in 1891, and is entitled "Vol. 1, Supplement to the Revised Statutes of the United States. Second edition. 1874–1891;" and supersedes the volume published under authority of Joint Resolution No. 44 of June 7, 1880 (21 Stat. 308). Under authority of act of February 27, 1893 (27 Stat. 477), the publication of the supplement was continued—part of a second volume being issued in 1895, containing general legislation of the Fifty-second and Fifty-third Congresses, between January 22, 1892, and March 2, 1895. Later numbers were issued at the end of each session as required by act of June 4, 1897 (30 Stat. 30), to include the general legislation of the Fifty-sixth Congress. Volume 2, therefore, comprises the general legislation of the Fifty-second to the Fifty-sixth Congresses, January 22, 1892, to March 3, 1901. Since then the publication has been discontinued, it is understood, because of the steps taken toward the preparation of a new revision of the statutes of the United States authorized by act of March 3, 1901 (31 Stat. 1181).

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322. *Publication and distribution, pamphlet edition.*—At the end of each session of Congress a pamphlet edition of the permanent and general legislation of the session, with notes, references, and an index, substantially on the plan of the existing Supplement, shall be stereotyped and printed at the Government Printing Office; the plates and all rights thereto to be the property of the United States. That the number of copies[1] of said pamphlet and the distribution and sale thereof shall be the same as provided for the printing, distribution, and sale of said Supplement by the act of April ninth, eighteen hundred and ninety. *Secs. 3 and 4, Act of Feb. 27, 1893 (27 Stat. 478).*

323. *Preservation of statutes at large.*—The various officers of the United States to whom, in virtue of their offices and for the uses thereof, copies of the United States Statutes at Large, published by Little, Brown and Company, have been or may be distributed at the public expense, by authority of law, shall preserve such copies, and deliver them to their successors respectively as a part of the property appertaining to the office. A printed copy of this section shall be inserted in each volume of the Statutes distributed to any such officers.[2] *Sec. 1777, R. S.*

ARMY REGULATIONS.

324. *Army regulations—President authorized to make and publish.*—That so much of the act approved July 15, 1870, entitled "An

[1] By act of Jan. 12, 1895 (28 Stat., 614), 200 copies were required to be furnished to the War Department.

[2] *Table showing the period covered by each of the thirty-seven volumes of the Statutes at Large.*

Stat.	Period. From—	Period. To—	Stat.	Period. From—	Period. To—
Vol. 1	Mar. 4, 1789	Mar. 3, 1799	Vol. 20	Oct. 16, 1877	Mar. 4, 1879
2	Dec. 2, 1799	Mar. 3, 1813	21	Mar. 18, 1879	Mar. 4, 1881
3	May 29, 1813	Mar. 3, 1823	22	Dec. 5, 1881	Mar. 3, 1883
4	Dec. 1, 1823	Mar. 3, 1835	23	Dec. 3, 1883	Mar. 3, 1885
5	Dec. 7, 1835	Mar. 3, 1845	24	Dec. 7, 1885	Mar. 3, 1887
6[a]	Mar. 4, 1789	Mar. 3, 1845	25	Dec. 5, 1887	Mar. 2, 1889
7[b]			26	Dec. 2, 1889	Mar. 3, 1891
8[c]			27	Dec. 7, 1891	Mar. 3, 1893
9	Dec. 1, 1845	Mar. 3, 1851	28	Aug. 7, 1893	Mar. 3, 1895
10	Dec. 1, 1851	Mar. 3, 1855	29	Dec. 2, 1895	Mar. 3, 1897
11	Dec. 3, 1855	Mar. 3, 1859	30	Mar. 15, 1897	Mar. 3, 1899
12	Dec. 5, 1859	Mar. 4, 1863	31	Dec. 4, 1899	Mar. 3, 1901
13	Dec. 7, 1863	Mar. 4, 1865	32	Dec. 2, 1901	Mar. 3, 1903
14	Dec. 4, 1865	Mar. 4, 1867	33	Dec. 7, 1903	Mar. 3, 1905
15	Mar. 4, 1867	Mar. 4, 1869	34	Dec. 4, 1905	Mar. 4, 1907
16	Mar. 4, 1869	Mar. 4, 1871	35	Dec. 2, 1907	Mar. 4, 1909
17	Mar. 4, 1871	Mar. 4, 1873	36	Mar. 15, 1909	Mar. 4, 1911
18	Dec. 1, 1873	Mar. 4, 1875	37	Apr. 4, 1911	Mar. 4, 1913
19	Dec. 6, 1875	Mar. 3, 1877			

[a] Private laws.
[b] Indian treaties.
[c] European treaties, with general index to vols. 1-8, inclusive, Statutes.

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act making appropriations for the support of the Army for the year ending June 30, 1871, and for other purposes" as requires the system of General Regulations for the Army therein authorized to be reported to Congress at its next session, and approved by that body be, and the same is hereby, repealed; and the President is hereby authorized, under said section, to make and publish regulations for the government of the Army in accordance with existing laws.[1] *Act of Mar. 1, 1875 (18 Stat. 337).*

[1] Section 37 of the act of July 28, 1866 (14 Stat. 337), contained the following requirement: "The Secretary be, and he is hereby, directed to have prepared and to report to Congress, at its next session, a code of regulations for the government of the Army, and of the militia in actual service, which shall embrace all necessary orders and forms of a general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts-martial, the existing regulations to remain in force until Congress shall have acted on said report." No code of regulations was submitted to Congress in conformity to the terms of this statute, and it was subsequently held by the Attorney-General of the United States, in an opinion rendered in the case of Contract-Surgeon Bayne (XVII Opin. Att. Gen., 461), that the above section, if not repealed by the general repealing clause of the Revised Statutes (section 5596), was superseded by the act of March 1, 1875 (18 Stat. 337), (*a*) which in effect conferred authority to modify existing Army Regulations as well as to create new ones. It was also held by the same officer that the code of regulations prepared in conformity to the authority conferred by section 2 of the act of June 23, 1879, (*b*) which was approved and published to the Army on February 17, 1881 (Army Regulations of 1881), superseded the code of Army Regulations of 1863 (XVII Opin. Att. Gen., 461). (See, also, U. S. *v.* Eaton, 144 U. S., 617, 688; Caha *v.* U. S., 152 U. S., 212, 219; Morrison *v.* U. S., 13 Ct. Cls., 1–6; Smith *v.* U. S., 23 id., 452; Low *v.* Harrison, 72 Maine, 104.)

The codification of the "Regulations of the Army and General Orders," prepared in conformity to section 2 of the act of June 23, 1879 (21 Stat., 34), which was approved and promulgated to the Army on February 17, 1881 (Army Regulations of 1881), superseded the body of regulations similarly promulgated in 1863. (XVII Opin. Att. Gen., 461.)

The Army Regulations derive their force from the power of the President as Commander in Chief, and are binding upon all within the sphere of his legal and constitutional authority. (Kurtz *v.* Moffatt, 115 U. S., 487, 503; U. S. *v.* Eliason, 16 Pet., 291; U. S. *v.* Freeman, 3 How., 556.) The power of the Executive to establish rules and regulations for the government of the Army is undoubted. The power to establish implies, necessarily, the power to modify or repeal, or to create anew. The Secretary of War is the regular, constitutional organ of the President for the administration of the military establishment of the Nation, and orders publicly promulgated through him must be received as the act of the Executive and, as such, be binding upon all within the sphere of his legal or constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise or mistaken. (U. S. *v.* Eliason, 16 Pet., 291, 302.)

The term regulations of an Executive Department describes rules and regulations relating to subjects on which a department acts, which are made by the head under an act of Congress conferring that power, and thereby giving to such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. (Harvey *v.* U. S., 3 Ct. Cls., 38, 42; Dig. Opin. J. A. G., par. 494, and note 1; IV Comp. Dec., 225.) A "regulation" affects a class of officers; an "instruction" is a direction to govern the conduct of the particular officer to whom it is addressed. (Landram *v.* U. S., 16 Ct. Cls., 74.) The Army Regulations when sanctioned by the President have the force of law, because it is done by him by the authority of law. (U. S. *v.* Freeman, 3 How., 556; Gratiot *v.* U. S., 4 How., 80; Ex parte Reed, 100 U. S., 13; Smith *v.* U. S., 23 Ct. Cls., 452.) When Congress permits regulations to be formulated and pub-

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325. *Schedule of pay to appear.*—That there be annexed annually hereafter to the Army Register an accurate schedule of the pay and emoluments, with the commutation value thereof, to which the various officers of the Army of each grade are entitled. *House resolution, Aug. 30, 1842.*

326. *Lineal rank, etc.*—In every Official Army Register hereafter issued the lineal rank of all officers of the line of the Army shall be given separately for the different arms of the service; and if the officer be promoted from the ranks, or shall have served in the Volunteer Army, either as an enlisted man or officer, his service as a private and noncommissioned officer shall be given, and in addition thereto the record of his service as volunteer. *Sec. 2, Act of June 18, 1878 (20 Stat. 149).*

HISTORICAL NOTE.

The first volume of Army Regulations, using that term in the sense in which it is now understood, was issued to the Army on May 1, 1813, under the authority conferred by the act of March 3 of that year.

From March 29, 1779, until May 1, 1813, the "Regulations for the Order and Discipline of the Troops of the United States" were in force. They were prepared by Major General Baron Steuben, the Inspector General of the Army during the latter part of the War of the Revolution, and consisted in great part of matter which would now be properly termed drill regulations. The work was first printed at Worcester, Mass., in 1778, and was formally approved and

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lished and carried into effect from year to year, the legislative ratification must be implied. (Maddox *v.* U. S., 20 Ct. Cls., 193, 198.)

The authority of the head of an Executive Department to issue orders, regulations, and instructions, with the approval of the President, is subject to the condition, necessarily implied, that they must be consistent with the statutes which have been enacted by Congress. (U. S. *v.* Symonds, 120 U. S., 46, 49; U. S. *v.* Bishop, idem., 51; Dig. Opin. J. A. G., par. 494, note 2; par. 6, p. 168.) Regulations can have no retroactive effect. (U. S. *v.* Davis, 132 U. S., 334.) Provision of statute exists by which the statute regulations of the Army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the Navy. (VI Opin. Att. Gen., 10; 8 id., 337.) The same discrepancy exists in the military law of Great Britain. (Id.)

Regulations prescribed and framed by the Secretary of War and which are intended for the direction and government of the officers of the Army and agents of the department do not bind the Commander in Chief nor the head of the War Department. (Burns *v.* U. S., 12 Wall., 246; Smith *v.* U. S., 24 Ct. Cls., 209, 215. But see Arthur *v.* U. S., 16 Ct. Cls., 422, and U. S. *v.* Barrows, 1 Abb., 351.)

Regulations which heads of departments are expressly authorized to make in which the public is interested, become a part of that body of public records of which the courts take judicial notice. (Caha *v.* U. S., 152 U. S., 211.)

The purpose of a regulation is to carry into effect the law; but where rights, duties, and obligations are defined by statute, they can not be taken away or abridged by regulations. (Laurey *v.* U. S., 32 Ct. Cls., 259; U. S. *v.* Garlinger, 169 U. S., 316.)

While regulations duly promulgated have the force of law in a limited sense, they can not enlarge or restrict the liability of the officer on his bond. (Meads *v.* U. S., 81 Fed. Rep., 684.)

Amendment and waiver of regulations.—Regulations made by the head of a department may be amended or waived in their application to particular cases. (III Comp. Dec., 305; IV id., 40; I id., 326.) There must be a specific waiver, however, and in the absence of such specific waiver the regulation as it stands will be applied by the accounting officers in the settlement of accounts. (III id., 304; IV id., 40.)

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adopted by Congress on March 29, 1779. The last edition of the Steuben regulations appeared in 1809, and it continued in use as a drill book after it had ceased to have authority as a volume of Army regulations. In 1808 a small volume was published, apparently with the sanction of the War Department, containing the Articles of War which had been enacted in 1806, to which were added such military laws as were then in force.

Section 5 of the act of March 3, 1813 (2 Stat. 819), required the Secretary of War to prepare general regulations which, "when approved by the President of the United States, shall be respected and obeyed until altered or revoked by the same authority." The volume of regulations issued in pursuance of this authority was entitled "Military laws and rules and regulations for the armies of the United States," and was approved by the President on May 1, 1813. It contained the Articles of War of 1806, together with the statutes relating to the military establishment and a small number of regulations, properly so called. Editions of this work were published in 1814 and 1815, the latter, however, without the authority of the War Department.

The act of April 24, 1816 (3 Stat. 298), provided that the "regulations in force before the reduction of the Army be recognized as far as the same shall be found applicable to the service, subject, however, to such alterations as the Secretary of War may adopt, with the approbation of the President." In accordance with this legislation a volume of regulations was issued in September, 1816, and in January, 1820, a new edition containing the orders of the War Department issued since September, 1816.

Section 14 of the act of March 2, 1821 (3 Stat. 616), contained a provision that "the system of regulations prepared by Major General Scott shall be, and the same are hereby, approved and adopted for the government of the Army of the United States and of the militia when in the service of the United States." These regulations were approved by President Monroe and published to the Army in July, 1821. On May 7, 1822, section 14 of the act of March 2, 1821, was formally repealed, thus withdrawing the legislative sanction which had been conferred by the statute above cited. As to this enactment Attorney General Wirt advised that, "notwithstanding such repeal, the regulations having received the sanction of the President, continued in force by the authority of the President in all cases where they did not conflict with positive legislation." (1 Opin. Att. Gen. 549.) The regulations of 1821 were revised under the direction of General Scott and a new edition was issued on March 1, 1825, which continued in force until 1835.

A volume of General Regulations, compiled under the direction of Major General Macomb, was printed and prepared for issue on September 1, 1835, but was not formally approved and promulgated until December 31, 1836. A second edition of this work, with some modifications, was issued in 1841, and a third edition, containing alterations and amendments, which have been promulgated in orders or taken from former volumes of regulations, was issued to the Army on May 1, 1847.

On January 1, 1857, a volume of Army Regulations, containing a number of important modifications, together with a general rearrangement of paragraphs and subject matter, was prepared under the direction of Secretary Davis, and published with the approval of the President on January 1, 1857. This volume continued in force until August 10, 1861, when it was replaced by a revised edition; a second edition of this work was issued on June 25, 1863, containing the "changes and laws affecting Army Regulations and Articles of War."

The thirty-seventh section of the act of July 28, 1866 (14 Stat. 337), directed the Secretary of War "to have prepared and to report to Congress at its next session a code of regulations for the government of the Army and of the militia in actual service, which shall embrace all necessary orders and forms of a general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts-martial; the existing regulations to remain in force until Congress shall have acted on said report." No code of regulations having been submitted, Congress provided, in section 20 of the act of July 15, 1870 (16 Stat. 319), that "the Secretary of War shall prepare a system of general regulations for the administration of the affairs of the Army, which, when approved by Congress, shall be in force and obeyed until altered or revoked by the same authority, and said regulations shall be reported to Congress at its next session: *Provided*, That the said regulations shall not be inconsistent with the laws of the United States."

In conformity to this legislation a code of regulations, which had been prepared by a board of officers of which Inspector General Marcy was the presi-

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dent, was submitted to the House of Representatives on February 17, 1873, and was by that body referred to the Committee on Military Affairs and ordered to be printed. No steps looking to their adoption were taken during the remainder of the session, and the Fifty-second Congress adjourned without action. The question was taken up by the Military Committee of the House of Representatives in the Forty-third Congress, and the proposition of adopting a code of Army regulations was carefully considered. The conclusion reached by the committee was that the power to make and amend or alter regulations had best be left to Executive discretion. To that end a recommendation was submitted, which was adopted by Congress and approved by the President on March 1, 1875 (18 Stat. 337). This enactment repealed section 20 of the act of July 15, 1870, and authorized the President "to make and publish regulations for the government of the Army in accordance with existing laws."

Section 2 of the act of June 23, 1879 (21 Stat. 34), authorized and directed the Secretary of War "to cause all the regulations now in force to be codified and published to the Army," and provided that the expense attending the publication of the work should be defrayed from the appropriation for the contingent expenses of the Army for the current fiscal year. Under the authority thus conferred the Regulations of 1881 were prepared and issued to the Army, the order of promulgation bearing date February 17, 1881. A revision and condensation of this volume was issued by the Secretary of War on February 9, 1889. Later revisions were issued October 31, 1895; May 1, 1901; September 15, 1904; December 31, 1910; and November 15, 1913.

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NOTE.—The following quotation from the opinion of the court in Wright *v.* United States (15 Ct. Cls., 86) gives a very clear exposition of the status of the Revised Statutes.

The Revised Statutes are an act of Congress, duly passed by the Senate and House of Representatives, approved by the President, received by the Secretary of State and deposited in the State Department, where alone the originals of all laws of the United States are preserved. (Rev. Stat. sec. 204; act Dec. 28, 1874, 18 Stat. ch. 9, p. 294.) They were approved and became the law June 22, 1874. In section 5595 it is enacted that they "embrace the statutes of the United States, general and permanent in their nature in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress."

It was no doubt the desire and understanding of Congress that the revision should generally reproduce and express the preexisting laws so far as it was practicable to do so. But it is well known that in the multiplicity of statutes to be revised, the ambiguity of the language of many of them, and the great difficulty and embarrassment encountered in determining the effect of legislation upon earlier acts of the same subjects, the commissioners made numerous errors and omissions. While the act was under consideration by the House of Representatives and the committee on the revision of laws, many changes were made in the language of the commissioners' report, which in some instances may also have altered the law. As early as February 18, 1875, an act was passed entitled "An act to correct errors and to supply omissions in the Revised Statutes of the United States" (18 Stat. 316, ch. 80); and on the 27th of February, 1877, another was passed entitled "An act to perfect the revision of the statutes of the United States, and of the statutes relating to the District of Columbia" (19 Stat. 240, ch. 69). By these and other acts several hundred errors and omissions have been corrected. There still remain, however, in the revision many alterations of former laws, which Congress have never yet seen fit to disturb.

But whether or not the revision correctly reproduced the preexisting statutes in any particular case, the Revised Statutes became the law of the land on the 22d of June, 1874, when they were enacted by Congress and approved by the President, and they must so continue until altered by the same legislative power that created them. The preexisting laws thus revised are repealed and no longer in force. Section 5596 declares expressly that "all acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision are hereby repealed, and the section applicable thereto shall be in force in lieu thereof, all parts of such acts not contained in such revision having been repealed or superseded by subsequent acts, or not being general or permanent in their nature." (Holmes *v.* Wiltz, 11 La. Ann., 446; United States *v* Ham-

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mond, 2 Wood, C. C. R. 208; Hann v. United States, 14 Ct. Cls. R., 305; Boucicault v. Hart, 12 Blatch., 52; Bowen v. United States, 14 Ct. Cls. R., 162; affirmed on appeal, 100 U. S., 508.)

In case of ambiguous language in the Revised Statutes, or uncertainty as to the true construction to be given to the words of any section, previous acts on the same subject may be referred to and examined for light on the object and intent of Congress as shown by the course of legislation, in the same manner as statutes in pari materia relating to the same subject may always be taken, compared, and construed together. But when the language is clear, the latest act, as expressing the latest will of Congress, must govern and must supersede the preexisting legislation inconsistent therewith. (Bradshaw v. United States, 14 Ct. Cls. R., 78; Hann v. United States, 14 id., 305, and other cases above cited.)

As to the printed publications, the first edition is a transcript of the original Revised Statutes preserved in the Department of State, and is prima facie evidence thereof. If, however, the correctness of the printed copy is drawn in question, the original is the only conclusive evidence of the exact text of the law.

The second edition is neither a new revision nor a new enactment, but is only a new publication. It is a compilation containing a copy of the original Revised Statutes, like the first edition, with certain specific alterations and amendments made by subsequent enactments of the Forty-third and Forty-fourth Congresses, incorporated according to the judgment and discretion of the editor, under authority of the law providing for his appointment. (Act Mar. 2, 1877, ch. 82, 19 Stat. 268.) The editor had no power to change the substance or alter the language of the revision, nor to correct any errors or supply any omissions. The whole text of the Revised Statutes, as published in the first edition, is preserved; but where by the specific amendments made by the two Congresses mentioned, sections or parts of sections were repealed, those repealed provisions are printed in italics and included in brackets; and where, in like manner, by legislative enactment, words were required to be added or inserted, they are incorporated in their proper places in ordinary Roman letters, and are also inclosed in brackets.

Section 79, referred to in the argument of this case, illustrates the manner in which the second edition was edited. In the original, and of course in the first edition, that section stood thus:

"SEC. 79. After the fourth day of March, eighteen hundred and seventy-five, no money shall be paid from the Treasury for the publication of the laws in newspapers."

The act of February 18, 1875, ch. 80 (18 Stat. 317), provided that "section seventy-nine is amended by striking out in the second line the words 'no money shall be paid from the Treasury for,' and adding, at the end of the section, the words 'shall cease.'" The editor incorporated the two together, thus:

"SEC. 79. After the fourth day of March, eighteen hundred and seventy-five (*no money shall be paid from the Treasury for*), the publication of the laws in newspapers (shall cease)."

Omitting the words in italics, this section expresses the law as it has stood since February 18, 1875, when the amendment was enacted.

The act for the preparation and publication of the second or new edition of the Revised Statutes provides that "the printed volume shall be legal evidence of the laws therein contained in all the courts of the United States and of the several States and Territories, but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three." (Act Mar. 2, 1877, ch. 82, 19 Stat. 268, as amended by act Mar. 9, 1878, ch. 26, 20 Stat. 27.)

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CHAPTER X.

THE MILITARY ESTABLISHMENT—GENERAL PROVISIONS OF ORGANIZATION.

THE REGULAR ARMY—THE VOLUNTEER ARMY AND THE MILITIA.[1]

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327. *Composition of national forces.*—All able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States. *Sec. 1, Act of Apr. 22, 1898 (30 Stat. 361).*

328. *Organized and active land forces.*—The organized and active land forces of the United States shall consist of the Army of the United States and of the militia of the several States when called into the service of the United States: *Provided*, That in time of war the Army shall consist of two branches which shall be designated,

[1] For statutes respecting the militia, see chapter entitled The Militia; and for statutes respecting the volunteer forces, see chapter entitled Volunteers.

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respectively, as the Regular Army and the Volunteer Army of the United States.[1] *Sec. 2, id.*

329. *Land forces, composition of.*—The land forces of the United States shall consist of the Regular Army, the organized land militia while in the service of the United States, and such volunteer forces as Congress may authorize. *Sec. 1, Act of Apr. 25, 1914 (38 Stat. 347).*

THE REGULAR ARMY.[2]

330. *Regular army.*—The Regular Army is the permanent military establishment, which is maintained both in peace and war according to law. *Sec. 3, Act of Apr. 22, 1898 (30 Stat. 361).*

(See chapters entitled, respectively, Staff Departments and Troops of the line.)

331. *Composition of Regular Army.*—From and after the approval of this act the Army of the United States, including the existing organizations, shall consist of:

Fifteen regiments of cavalry.
A corps of artillery.
Thirty regiments of infantry.
One Lieutenant-General.
Six major-generals.
Fifteen brigadier-generals.
An Adjutant-General's Department.
An Inspector-General's Department.
A Judge-Advocate General's Department.
A Quartermaster's Department.
A Subsistence Department.
A Pay Department.
A Medical Department.
A Corps of Engineers.
An Ordnance Department.
A Signal Corps.
The officers of the Record and Pension Office.
The Chaplains.
The officers and enlisted men of the Army on the retired list.

[1] The invariable policy of the Government has been to consider the military forces as falling into two classes: Those who were soldiers or sailors by profession, irrespective of the national exigency, who took war when it came, and, if they survived it, continued to make military occupation the business of their lives; second, those who left their ordinary avocations at the outbreak of or during the continuance of hostilities and enlisted with the expectation of serving only so long as the exigency continued. (Cleary *v.* U. S., 35 Ct. Cls., 207, 211.)

[2] For provision authorizing the President, when military conditions so require, to organize the land forces of the United States into brigades and divisions and such higher units as he may deem necessary, see Act of April 25, 1914 (Public No. 90, 38 Stat. —), chapter entitled Volunteers, par. 1385.

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The professors, the Corps of Cadets, the Army Detachments, and band of the Military Academy.

Indian Scouts, as now authorized by lay; and such other officers and men as may hereinafter be provided for. *Sec. 1, Act of Feb. 2, 1901 (31 Stat. 748).*

(The office of Lieutenant General has ceased to exist on the active list. See chapted entitled General Officers and Aids. The Quartermaster's Department, the Subsistence Department, and the Pay Department have been consolidated and form the Quartermaster's Corps. The Coast Artillery and the Field Artillery have been separated and now constitute two arms of the service. See chapter entitled Troops of the Line. For the details of the law in regard to the composition, etc., of the Regular Army see the various chapters bearing appropriate headings. The law relating to the Philippine Scouts and the Porto Rico Regiment will be found in this chapter, pars. 335–340 and 341–346. The law establishing the Bureau of Insular Affairs will be found in the chapter entitled Department of War, pars. 155–160 ante. For the enlistment of Indian Scouts see this chapter, par. 334.)

332. *Enlisted strength of the Army.*—The total enlisted force of the line of the Army, together with such native force, shall not exceed, at any one time, one hundred thousand.[1] *Sec. 36, Act of Feb. 2, 1901 (31 Stat. 757).*

333. *Same—Duration of.*—The President is authorized to maintain the enlisted force of the several organizations of the Army at their maximum strength, as fixed by this act, during the present exigencies of the service, or until such time as Congress may hereafter otherwise direct.[2] *Sec. 30, Act. of Feb. 2, 1901 (31 Stat. 756).*

334. *Indian scouts.*—The President is authorized to enlist a force of Indians, not exceeding one thousand, who shall act as scouts in the Territories and Indian country. They shall be discharged when the necessity for their service shall cease, or at the discretion of the department commander. A proportionate number of noncommis-

[1] The acts of June 1, 1874 (18 Stat. 73), March 3, 1875 (id., 452), July 24, 1876 (19 Stat. 77), November 21, 1877 (20 Stat. 2), and June 18, 1878 (id., 146), contained a provision limiting the number of enlisted men in the Army to 25,000, including hospital stewards and Indian scouts. The act of June 29, 1879 (21 Stat. 30), contained a requirement "that no money appropriated by this act shall be paid for recruiting the Army beyond the number of 25,000 enlisted men, including Indian scouts and hospital stewards; and thereafter there shall be no more than 25,000 enlisted men in the Army at any one time, unless otherwise authorized by law." This provision was repeated in the acts of May 4, 1880 (21 Stat. 110), February 24, 1881 (id., 346), June 30, 1882 (22 Stat. 117), March 3, 1883 (id., 456), July 5, 1884 (23 Stat. 107) and March 3, 1885 (id., 357). The act of March 1, 1887 (24 Stat. 435), which provided that the enlisted force of the Hospital Corps should be in excess of the strength authorized by law, was expressly repealed by the act of March 8, 1898 (30 Stat. 261), which fixed the enlisted strength of the Army at 26,610.

(The native force mentioned in the Philippine Scouts see post, pars. 335–340.)

[2] As to the authorized enlisted strength of the various arms of the service, see G. O. 8, War Dept., 1912, and orders amendatory thereof, and G. O. 67, War Dept., 1913; see also sec. 10, act of April 25, 1914 (Public No. 90, 38 Stat. —), chapter entitled Volunteers, par. 1391, which provides that in time of war or while war is imminent all organizations of the land forces in the military service of the United States shall be recruited and maintained as near their prescribed strength as practicable.

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sioned officers may be appointed. And the scouts, when they furnish their own horses and horse equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed. *Act of Aug. 12, 1876 (19 Stat. 131).*

335. *Native troops in the Philippine Islands.*—That when in his opinion the conditions in the Philippine Islands justify such action the President is authorized to enlist natives of those islands for service in the Army, to be organized as scouts, with such officers as he shall deem necessary for their proper control, or as troops or companies, as authorized by this act, for the Regular Army. The President is further authorized, in his discretion, to form companies, organized as are companies of the Regular Army, in squadrons or battalions, with officers and noncommissioned officers corresponding to similar organizations in the cavalry and infantry arms. The total number of enlisted men in said native organizations shall not exceed twelve thousand, and the total enlisted force of the line of the Army, together with such native force, shall not exceed at any one time one hundred thousand. *Sec. 36, Act of Feb. 2, 1901 (31 Stat. 757).*

336. *Same—Officers therefor.*—The majors to command the squadrons and battalions shall be selected by the President from captains of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of the grade of major. The captains of the troops or companies shall be selected by the President from the first lieutenants of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of captain of the arm to which assigned. The squadron and battalion staff officers, and first and second lieutenants of companies, may be selected from the noncommissioned officers or enlisted men of the Regular Army of not less than two years' service, or from officers or noncommissioned officers or enlisted men serving, or who have served, in the volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, and officers of those grades shall be given provisional appointments for periods of four years each, and no such appointments shall be continued for a second or subsequent term unless the officer's conduct shall have been satisfactory in every respect. *Id.*

(In regard to captains of Philippine Scouts, however, see par. 339, post.)

337. *Same—Natives may be appointed lieutenants.*—When, in the opinion of the President, natives of the Philippine Islands shall, by their services and character, show fitness for command, the President is authorized to make provisional appointments to the grades of second and first lieutenants from such natives, who, when so appointed, shall have the pay and allowances to be fixed by the Secretary of War, not exceeding those of corresponding grades of the Regular Army. *Id.*

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338. *Same—Pay and allowances.*—The pay and allowances of provisional officers of native organizations shall be those authorized for officers of like grades in the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army. *Id.*

(The pay of the enlisted men and the Philippine Scouts is fixed by G. O. 236, War Dept., 1909. As to allowances, see Army Regulations.)

339. *Captains of Philippine Scouts.*—The office of captain in the Philippine Scouts is hereby created as a grade of rank in the military establishment. Such captains shall be selected from officers of the grade of first lieutenants in said scouts, and shall be given provisional appointments for periods of four years each, and no such appointments shall be continued for a second or subsequent period unless the officers' conduct shall have been satisfactory in every respect: *Provided,* That the number of officers provisionally appointed under the terms of this Act shall not at any time exceed the number of companies of said native troops which may be formed by the President from time to time for service in the Philippine Islands. *Act of May 16, 1908 (35 Stat. 163).*

340. *Philippine Scouts may serve under certain constabulary officers.*—Any companies of Philippine scouts ordered to assist the Philippine constabulary in the maintenance of order in the Philippine Islands may be placed under the command of officers serving as chief or assistant chiefs of the Philippine constabulary, as herein provided: *Provided,* That when the Philippine scouts shall be ordered to assist the Philippine constabulary, said scouts shall not at any time be placed under the command of inspectors or other officers of the constabulary below the grade of assistant chief of constabulary. *Sec. 2, Act of Jan. 30, 1903 (32 Stat. 783).*

341. *The Porto Rican regiment.*—The President is authorized to organize and maintain one provisional regiment of not exceeding three battalions of infantry, for service in Porto Rico, the enlisted strength thereof to be composed of natives of that island as far as practicable. The regiment shall be organized as to numbers as authorized for infantry regiments of the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army. The field officers shall be selected from officers of the next lower grades in the Regular Army and shall, while so serving in the higher grade, have the rank, pay, and allowances thereof. The company and regimental and battalion staff officers shall be appointed by the President. The President may, in his discretion, continue with their own consent the volunteer officers and enlisted men of the Porto Rico regiment, whose terms of service

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expire by law July first, nineteen hundred and one. Enlistments for the Porto Rico regiment shall be made for periods of three years, unless sooner discharged. The regiment shall be continued in service until further directed by Congress.[1] *Sec. 37, Act of Feb. 2, 1901 (31 Stat. 758).*

342. *Same.*—For Porto Rico Provisional Regiment of Infantry, composed of two battalions of four companies each, to include the enlisted men of the present regiment who may be in the service June thirtieth, nineteen hundred and four, and officers as herein provided. The field officers shall be detailed from the officers of the Regular Army of the same grade and shall receive the pay and emoluments of their grade. The present officers of the regiment below the grade of field officers who are mentally, morally, and physically qualified and have proved efficient in their respective positions may be reappointed by the President, by and with the advice and consent of the Senate (and such officers shall be entitled to preference in such appointments) for a provisional term of four years. Officers so reappointed shall be eligible for promotion in the regiment up to and including the rank of captain, upon examination as to their fitness for such promotion. Vacancies then existing or thereafter occurring in the grade of second lieutenant may be filled by the President, in his discretion, by and with the advice and consent of the Senate, by the appointment of citizens of Porto Rico for the provisional term of four years, whose qualifications for commissions shall be established by such examination as the President may prescribe, who shall also be eligible for promotion in the regiment up to and including the rank of captain, upon an examination as to their fitness. Vacancies not filled as hereinbefore provided by the reappointment or promotion of the present officers or by the appointment or promotion of citizens of Porto Rico, shall be filled by detail from the line of the infantry of the Army of the same grade with the vacancy to be filled. Men hereafter enlisted in the regiment shall be citizens of Porto Rico and shall be enlisted for a term of two years; and except in the case of noncommissioned officers shall not be reenlisted in time of peace. The names of all enlisted men who have served honorably in the regiment shall be kept at the headquarters of the regiment, and these men shall be regarded as a reserve, to be specially considered in time of war. The pay and allowances of officers and enlisted men of the regiment shall be the same as authorized for like grades in the Regular Army. *Act of Apr. 23, 1904 (33 Stat. 266).*

343. *Same—Term of enlistment.*—Men hereafter enlisted in the Porto Rico Provisional Regiment of Infantry shall be enlisted for a period of three years and may be reenlisted, such enlistments and

[1] This has reference to the original organization of the regiment. For changes in organization and the present status of the regiment, see pars. 342–344, which follow.

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reenlistments to be subject to the regulations governing the Army at large, with such modifications as to physical requirements as the President may prescribe. *Act of May 11, 1908 (35 Stat. 114).*

344. *Same—Designation changed.*—On and after the thirtieth day of June, nineteen hundred and eight, the Porto Rico Provisional Regiment of Infantry shall be designated the Porto Rico Regiment of Infantry of the United States Army. It shall be composed of the two existing battalions of the Porto Rico Provisional Regiment of Infantry. *Sec. 1, Act of May 27, 1908 (35 Stat. 392).*

345. *Same—Field officers.*—The field officers of said regiment shall be one lieutenant-colonel and two majors, who shall be detailed for four years by the President from officers not below the rank of captain of the Army. *Sec. 2, id.*

346. *Same—Captains and lieutenants.*—The present captains and lieutenants of the Porto Rico Provisional Regiment of Infantry appointed or who were reappointed after a mental, physical, and professional examination, may be recommissioned as officers of the Porto Rico Regiment of Infantry. *Sec. 3, id.*

347. *Same—Second lieutenants, appointment of.*—Vacancies in the grade of second lieutenant may be filled by the President in his discretion by the appointment of citizens of Porto Rico whose qualifications for commissions shall be established by examination.[1] *Sec. 4, id.*

348. *Same—Promotion of lieutenants.*—Promotions to the grade of first lieutenant and captain shall be according to seniority within the regiment, subject to the examination provided by law. All appointments and promotions herein provided for shall be made with the advice and consent of the Senate. Officers of the Porto Rico Regiment of Infantry shall have the same rank, pay, rights, and allowances provided by law for officers of similar rank in the Army of the United States, except as herein provided with regard to promotion. Any of the officers provided for by section three who may have become incapacitated for active service by reason of disability incident to the service shall be placed upon the retired list with the rank to which they would otherwise be entitled. *Sec. 5, id.*

349. *Citizens of Porto Rico may enlist in Regular Army and Porto Rico Regiment may be ordered outside of island.*[2]—Citizens of Porto Rico shall be eligible for enlistment in the Regular Army and the Porto Rico Regiment may be ordered for service outside of the island of Porto Rico. *Act of Mar. 2, 1903 (32 Stat. 934).*

HISTORICAL NOTE.

The military establishment at the organization of the Government under the Constitution contained no officer of higher rank than lieutenant-colonel. Authority was conferred by the act of March 3, 1791 (1 Stat. 222), to appoint a major-general and a brigadier-general, should the President deem that course necessary, and, by the act of March 28, 1792 (id., 246), the number of brigadier-

[1] This has reference to the regiment mentioned in par. 342.
[2] See par. 1029, post.

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generals was to be increased to four, if, in the opinion of the President, such appointments would "be conducive to the good of the public service." This authority was withdrawn, however, by section 3 of the act of May 30, 1796 (id., 483). The number of brigadier-generals was reduced to one, and the office of major-general was abolished by the act of March 3, 1797 (id., 507). The act of May 28, 1798 (id., 558), passed in contemplation of war with France, conferred authority upon the President to appoint a lieutenant-general and a suitable number of major-generals; by section 3 of the act of July 16, 1798 (id., 604), the number of major-generals so appointed was restricted to two, and the number of brigadier-generals to four. The grade of lieutenant-general was abolished and replaced by that of general of the armies of the United States, by section 9 of the act of March 3, 1799 (id., 752). The difficulties with France having been put in the way of settlement, recruiting was suspended until the further order of Congress by the act of February 20, 1800 (2 id., 7); military appointments were authorized to be suspended by the act of May 14, 1800 (id., 85), and at the reduction of 1802, the number of general officers was reduced to one brigadier-general. (Sec. 3, act of Mar. 16, 1802, 2 id., 132.)

During the controversy with Great Britain which culminated in the war of 1812, the appointment of two additional brigadier-generals was authorized by section 3 of the act of April 12, 1808 (2 id., 481); by the act of December 24, 1811 (id., 669), the existing military establishment was ordered to be immediately completed, and by section 4 of the act of January 11, 1812 (id., 671), two major-generals and four brigadier-generals were authorized. By the act of February 24, 1813 (id., 801), six major-generals and six brigadier-generals were authorized in addition to those already in service. The act of March 3, 1815 (3 id., 224), fixing the military peace establishment, reduced the number of major-generals to two and the number of brigadier-generals to four; at the general reduction of 1821 these numbers were fixed at one and two, respectively (section 5, act of Mar. 2, 1821, id., 615), at which number it remained until the outbreak of hostilities with Mexico in 1846. The act of May 13, 1846 (9 Stat., 9), providing for the prosecution of the existing war with Mexico, authorized the acceptance of 50,000 volunteers, and conferred power upon the President to organize the forces thus provided into divisions and brigades, and to apportion the general and staff officers among the respective States and Territories as he might deem proper. One major-general and two brigadier-generals, in addition to those already authorized by law, were added to the establishment by the act of June 18, 1846 (id., 17), with the proviso that the number of general officers was to be reduced to that existing at the outbreak of hostilities upon the termination of the war "by a definitive treaty of peace." With a view to determine the number of general officers to be appointed under the act of May 13, 1846, it was provided by the act of June 26, 1846 (id., 20), that brigades of volunteer troops should consist of not less than three regiments and divisions of not less than two brigades; and any reduction in the strength of the volunteer forces was to involve a corresponding reduction in the number of general officers, all of whom were to be mustered out at the close of the war. By the act of March 3, 1847 (id., 184) two major-generals and three brigadier-generals were authorized for the period of the war. The reduction at the close of the war was accomplished by a proviso in the act of July 19, 1848 (id., 247), which required that vacancies occurring in the grade of general officer should not be filled until the numbers of major and brigadier general had been reduced to one and two, respectively.

At the outbreak of the war of the rebellion the President, by proclamations, dated April 15, 1861 (12 Stat., 1258), and May 3, 1861 (id., 1260), called forth a force of 75,000 militia and 42,034 volunteers; and Congress, by the act of July 22, 1861 (id., 268), authorized the enlistment of 500,000 volunteers, and made provision for their organization into brigades and divisions, and for the appointment of such numbers of general officers as were necessary to their command. By section 4 of the same act the President was authorized to select six major-generals and eighteen brigadier-generals from the line or staff of the Army, and the officers so appointed were allowed to retain their army rank. The number of general officers of volunteers was fixed by the act of July 5, 1862 (id., 506), which restricted the number of major-generals to forty and the number of brigadier-generals to two hundred. By section 9 of the act of July 28, 1866 (14 id., 333), the number of major-generals in the regular establishment was fixed at five and that of brigadier-generals at ten; by section 3 of the act of March 3, 1869 (15 id., 318), the number of brigadier-generals was reduced to eight; and by section 8 of the act of July 15, 1870 (16 id., 318), the number was still further reduced to six and that of major-generals to three.

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CHAPTER XI.

GENERAL OFFICERS AND AIDS.

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350. *The office of Lieutenant General to vacate.*[1]—When the office of Lieutenant-General shall become vacant it shall not thereafter be filled, but said office shall cease and determine: *Provided further*, That nothing in this provision shall affect the retired list. *Act of Mar 2, 1907 (34 Stat. 1160).*

(See par. 331, ante.)

[1] The grade of "General of the Armies of the United States" was created by section 9 of the act of March 3, 1799 (1 Stat. 752). The office, though not expressly referred to in any of the acts for the reduction or disbandment of the forces raised in contemplation of war with France, ceased to exist in 1802, not having been mentioned in the act of March 16, 1802 (2 id., 132), which determined the military peace establishment. The grade was revived under the title of "General of the Army of the United States," by the act of July 25, 1866 (14 id., 223), and was conferred upon Lieutenant-General Grant; and was recognized and continued by section 9 of the act of July 28, 1866 (id., 333). Section 6 of the act of July 15, 1870 (16 id., 318), contained the requirement, however, that "the offices of General and Lieutenant-General shall continue until a vacancy shall exist in the same, and no longer, and when such vacancy shall occur in either of said offices immediately thereupon all laws and parts of laws creating said office shall become inoperative, and shall, by virtue of this act, from thenceforward be held to be repealed." The office ceased to exist, as a grade of military rank, at the death of Gen. W. T. Sherman on February 14, 1891. The act of March 3, 1885 (23 id., 434), authorized the appointment of a "General of the Army on the Retired List," which was conferred upon Gen. Ulysses S. Grant, and expired on the death of that officer on July 23, 1885. By the act of June 1, 1888 (25 id., 165), the grade of Lieutenant-General was discontinued and merged in that of General of the Army, which was conferred upon Lieut. Gen. P. H. Sheridan, and ceased to exist at the death of that officer on August 5, 1888.

The grade of Lieutenant-General was first established by the act of May 28, 1798 (1 Stat. 558); it was abolished, however, by section 9 of the act of March 3, 1799 (id., 752), and the command of the forces authorized to be raised, in contemplation of war with France, was vested in the "General of the Armies of the United States" authorized by that statute. The grade was revived by joint resolution No. 9 of February 15, 1855 (10 id., 723), and the rank was conferred by brevet on Maj. Gen. Winfield Scott; the office thus created ceased to exist at the death of that officer on May 29, 1866. The grade was again revived by the act of February 29, 1864 (13 id., 11), and conferred upon Maj. Gen. Ulysses S. Grant, and the office was recognized and continued by section 9 of the act of July 28, 1866 (14 id., 333), but was to cease to exist upon the occurrence of a vacancy, under the restriction imposed by section 6 of the act of July 15, 1870 (16 id., 318). The office was vacated and merged in that of General of the Army upon the promotion of Lieutenant-General Sheridan to that grade,

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351. *Aids for general officers.*—Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army, and each brigadier-general shall have two aids, who may be selected by him from lieutenants of the Army. *Sec. 1098, R. S.*

(For statutory provisions and executive regulations respecting the staffs of general officers when assigned to commands see the chapter entitled Rank and command—Tactical and territorial organizations, and the F. S. R. For executive regulations in regard to aids, see Army Regulations. In regard to the Chief of Staff, see chapter entitled General Staff.)

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under the authority conferred by the act of June 1, 1888 (25 id., 165). It was revived a third time by joint resolution No. 9 of February 5, 1895 (28 id., 968), and was conferred, subject to the restriction therein contained, upon Maj. Gen. John M. Schofield, and the office continues to exist as a grade of military rank on the retired list. The rank, pay, and allowances of Lieutenant-General were conferred upon "the senior major-general of the line commanding the Army" by section 2 of the act of June 6, 1900 (31 id., 655); the office was revived as a grade of military rank by section 1, act of February 2, 1901 (31 Stat. 748).

Where the grades of General and Lieutenant-General have been revived it has been held that the right of the officers holding them to the personal staff created by earlier legislation, and never in terms abolished, also revived.

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CHAPTER XII.

RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.

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352. *Relative rank between officers of the Army and the Navy.*—The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army shall be as follows, lineal rank only being considered:

The Vice-Admiral shall rank with the Lieutenant-General.
Rear-admirals with major-generals.
Commodores[1] with brigadier-generals.
Captains with colonels.
Commanders with lieutenant-colonels.
Lieutenant-commanders with majors.
Lieutenants with captains.
Lieutenants, junior grade, with first lieutenants.
Ensigns with second lieutenants.

Sec. 1466, R. S.

(As to the Executive interpretation given to the terms "rank" and "command," see Army Regulations, 1913, Articles 3 and 4. A determination by the

[1] The office of commodore, as a grade of rank on the active list of the Navy, was abolished by section 7 of the act of March 3, 1899 (30 Stat. 1005); that statute also contained the requirement that "each rear-admiral embraced in the nine lower numbers of the grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army."

The office of lieutenant, junior grade, was created by the act of March 3, 1883 (22 Stat. 442), replacing that of master in the Navy, which was discontinued by that statute.

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legislative and executive branches of the Government, as to the relation or superior authority among military officers, is conclusive upon the judiciary. (De Celis *v.* U. S., 13 Ct. Cls., 117.) As to the existing grades and rank of officers and noncommissioned officers, see Army Regulations, 1913, paragraph 9. As to the commands appropriate to each grade, see Army Regulations, 1913, paragraph 14, and the Field Service Regulations. As to the right of command where different corps of the Army happen to join, etc., see Articles of War, 122, and section 305, ante.)

353. *Relative rank.*—In fixing relative rank between officers of the same grade and date of appointment and commission, the time which each may have actually served as a commissioned officer of the United States, whether continuously or at different periods, shall be taken into account. And in computing such time, no distinction shall be made between service as a commissioned officer in the Regular Army and service since the 19th day of April, 1861, in the volunteer forces, whether under appointment or commission from the President or from the governor of a State. *Sec. 1219, R. S.*

(For rules of precedence and determination of relative rank, see Army Regulations, 1913, paragraphs 10 and 11. See also Articles of War, 123.)

354. *Brevet rank.*—Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned. *Sec. 1211, R. S.*

355. *Officers of the Medical Corps restricted as to command.*—Officers of the Medical Department of the Army shall not be entitled in virtue of their rank, to command in the line or in other staff corps.[1] *Sec. 1169 R. S.*

356. *Tactical organizations.*—In the ordinary arrangement of the Army two regiments of infantry or of cavalry shall constitute a brigade, and shall be the command of a brigadier-general, and two brigades shall constitute a division, and shall be the command of a major-general; but it shall be in the discretion of the commanding general to vary this disposition whenever he may deem it proper to do so. *Sec. 1114, R. S.*

(For regulations respecting the organization of armies in the field in time of war, see the F. S. R.; see also Scott's Dig., pp. 244, 245. For the war organization of the military forces of the United States, see next paragraph.)

357. *War organization.*—In time of war, or when war is imminent, the troops in the service of the United States, whether belonging to the Regular or Volunteer Army or to the militia, shall be organized, as far as practicable, into divisions of three brigades, each brigade to be composed of three or more regiments; and whenever three or more divisions are assembled in the same army the President is authorized to organize them into army corps, each corps to consist of not more than three divisions. *Sec. 9, Act of Apr. 22, 1898 (30 Stat. 362.)*

(See F. S. R.)

[1] See also Army Regulations, 1913, paragraph 19.

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358. *Staff of Army Corps.*—The staff of the commander of an army corps shall consist of one assistant adjutant-general, one chief engineer, one inspector-general, one chief quartermaster, one chief commissary of subsistence,[1] one judge-advocate, and one chief surgeon,[2] who shall have, respectively, the rank of lieutenant-colonel; one assistant adjutant-general, who shall have the rank of captain, and the aids-de-camp authorized by law.[3] *Sec. 10, id.*

359. *Staff of a division or brigade.*—The staff of the commander of a division shall consists of one assistant adjutant-general, one engineer officer, one inspector-general, one chief quartermaster, one chief commissary of subsistence,[4] a chief signal officer,[5] and one chief surgeon, who shall have, respectively, the rank of major, and the aids-de-camp authorized by law. The staff of the commander of a brigade shall consist of one assistant adjutant-general, one assistant quartermaster, and one commissary of subsistence, each with the rank of captain;[6] one surgeon, and the aids-de-camp authorized by law. *Sec. 10, id.*

360. *The staff officers may be appointed or assigned.*—The staff officers herein authorized for the corps, division, and brigade commanders may be appointed by the President, by and with the advice and consent of the Senate, as officers of the Volunteer Army, or may be assigned by him, in his discretion, from officers of the Regular Army, or the Volunteer Army, or of the militia in the service of the United States: *Provided*, That when relieved from such staff service said appointments or assignments shall terminate. *Sec. 10, id.*

361. *Officers of Regular Army eligible for staff appointments.*—Officers of the Regular Army shall be eligible for such staff appointments, and shall not be held to vacate their offices in the Regular Army by accepting the same, but shall be entitled to receive only the pay and allowances of their staff rank: *Provided further*, That officers of the Regular Army receiving commissions in regiments of engineers, or any other commissions in the Volunteer Army, shall

[1] Since the consolidation of the Quartermaster, Commissary, and Pay Departments, this officer would no longer be called the Chief Commissary of Subsistence.

[2] So much of section 10 of the act of Congress approved April 22, 1898, as provides that the staff of a general commanding an Army corps shall consist of certain officers, with the rank of lieutenant-colonel, shall be held to include among such officers a chief signal officer. (Sec. 10. Act of Apr. 22, 1898, 30 Stat., 361; joint resolution No. 57, July 8, 1898, id., 752.)

[3] The Field Service Regulations contemplate the formation of field armies and not of Army Corps.

[4] Since the consolidation of the Quartermaster, Commissary, and Pay Departments, this officer would not longer be called the Chief Commissary of Subsistence.

[5] The Chief Signal Officer was added by joint resolution No. 57, July 8, 1898 (30 Stat. 752.)

[6] The Field Service Regulations contemplate a brigade only as a tactical organization; hence the staff of a commander, a brigade as given therein consists of only a division adjutant and the authorized aids.

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not be held to vacate their offices in the Regular Army by accepting the same, but shall be entitled to receive only the pay and allowances of such volunteer rank while serving as such. *Sec. 1, Act of May 28, 1898 (30 Stat. 421).*

362. *Pay to clerks, messengers, and laborers at headquarters of the several territorial departments, territorial districts, tactical divisions and brigades, service schools and office of the Chief of Staff.*—One chief clerk, at the office of the Chief of Staff, $2,000 per annum.

Fifteen clerks, at $1,800 each per annum.

Fifteen clerks, at $1,600 each per annum.

Thirty-eight clerks, at $1,400 each per annum.

Seventy clerks, at $1,200 each per annum.

Sixty-five clerks, at $1,000 each per annum.

Six clerks (Filipinos), at $500 each per annum.

One captain of the watch, at $900 per annum.

Three watchmen, at $720 each per annum.

One gardener, at $720 per annum.

One packer, at $840 per annum.

Two messengers, at $840 each per annum.

Fifty-nine messengers, at $720 each per annum.

Six messengers (Filipinos), at $300 each per annum.

One laborer, at $660 per annum.

Two laborers, at $600 each per annum.

One laborer, at $480 per annum.

Five charwomen, at $240 each per annum.

In all, $312,320.

Additional pay while on foreign service, $9,000.[1] *Act of April 27, 1914 (38 Stat. 355).*

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[1] As shown by the date of the act, this is the latest provision made for the purpose mentioned. The two following paragraphs have appeared annually for a number of years in the Army appropriation acts and may be taken as indicating the fixed policy of Congress in the premises:

That on and after July 1, 1914, the pay of clerks and messengers at headquarters of territorial departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto: *Provided further*, That the money hereby appropriated for such of said clerks, at $1,200 and $1,000 each per annum, and such of said messengers at $720 each per annum as may be employed and assigned by the Secretary of War to the headquarters of the Philippine Department, districts and posts therein, may, in case of vacancy and in the discretion of the commanding general, Philippine Department, be expended, in whole or in part, for the employment of Filipinos as clerks at not to exceed $500 each per annum, and messengers at not to exceed $300 each per annum.

And said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty with any bureau in the War Department. *Act of April 27, 1914 (Pub. No. 91, 38 Stat. —).*

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363. *Certain clerks and employees not to be detailed in War Department.*—It shall not hereafter be lawful to detail clerks or other civilian employees authorized for the Office of the General Staff for duty, temporary or otherwise, in any office or bureau of the War Department at Washington, District of Columbia, or to detail clerks or other employees from the War Department for service in the Office of the General Staff.[1] *Act of June 22, 1906 (34 Stat. 418).*

364. *Military headquarters.*—When the economy of the service requires, the Secretary of War shall direct the establishment of military headquarters at points where suitable buildings are owned by the Government.[2] *Sec. 8, Act of June 23, 1879 (34 Stat. 35).*

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[1] The clerks and messengers above referred to and provided for were first authorized by the act of August 6, 1894 (28 Stat. 236); they replace the force of "General service clerks and messengers" created by the act of July 29, 1886 (24 Stat. 167), but discontinued by the act of August 6, 1894 (28 Stat. 236). Their numbers and compensation are determined in the annual acts of appropriation for the support of the Army.

[2] *Territorial commands.*—In time of peace our Army has been habitually distributed into geographical commands, styled, respectively, military divisions, departments, and districts—the districts, as organized prior to 1815, corresponding to the commands now designated as departments. These divisions and departments can be established only by the President; but, within their respective departments, commanding generals have from time to time grouped adjacent posts into temporary commands, which are now known as districts.

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CHAPTER XIII.

THE GENERAL STAFF CORPS.

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365. *Establishment.*—There is hereby established a General Staff Corps, to be composed of officers detailed from the Army at large, under such rules as may be prescribed by the President. *Sec. 1, Act of Feb. 14, 1903 (32 Stat. 830).*

366. *Composition of.*—The General Staff Corps shall consist of one Chief of Staff and two general officers, all to be detailed by the President from officers of the Army at large not below the grade of brigadier general; four colonels, six lieutenant colonels, and twelve majors, to be detailed from the corresponding grades in the Army at large, under such rules for selection as the President may prescribe; twenty captains, to be detailed from officers of the Army at large of the grades of captain or first lieutenant, who while so serving shall have the rank, pay, and allowances of captain mounted. All officers detailed in the General Staff Corps shall be detailed therein for periods of four years, unless sooner relieved. While serving in the General Staff Corps, officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps, officers shall return to the branch of the Army in which they hold permanent commission, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in case of emergency or in time of war.[1] *Sec. 3, Act. of Feb. 14, 1903 (32 Stat. 831).*

367. *Same.*—The General Staff Corps shall consist of two general officers, one of whom shall be the Chief of Staff, four colonels, six lieutenant colonels, twelve majors, and twelve captains or first lieu-

[1] See paragraph 367, post; see, also, note to paragraphs 370 and 371, post.

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tenants, all of whom shall be detailed from the Army at large in the manner and for the periods prescribed by law.[1] *Sec. 5, Act of Aug. 24, 1912 (37 Stat. 594).*

368. *Duties of.*—The duties of the General Staff Corps shall be to prepare plans for the national defense and for the mobilization of the military forces in time of war; to investigate and report upon all questions affecting the efficiency of the Army and its state of preparation for military operations; to render professional aid and assistance to the Secretary of War and to general officers and other superior commanders, and to act as their agents in informing and coordinating the action of all the different officers who are subject under the terms of this Act to the supervision of the Chief of Staff; and to perform such other military duties not otherwise assigned by law as may be from time to time prescribed by the President.[2] *Sec. 2, Act of Feb. 14, 1903 (32 Stat. 831).*

369. *Duties of the Chief of Staff.*—The Chief of Staff, under the direction of the President or of the Secretary of War, under the direction of the President, shall have supervision of all troops of the line and of the Adjutant-General's, Inspector-General's, Judge-Advocate's, Quartermaster's, Subsistence, Medical, Pay and Ordnance departments, the Corps of Engineers, and the Signal Corps, and shall perform such other military duties not otherwise assigned by law as may be assigned to him by the President. Duties now prescribed by statute for the Commanding General of the Army as a member of the Board of Ordnance and Fortification and of the Board of Commissioners of the Soldiers' Home shall be performed by the Chief of Staff or other officer designated by the President. Acts and parts of Acts authorizing aides-de-camp and military secretaries shall not apply to general officers of the General Staff Corps.[3] *Sec. 4, Act of Feb. 14, 1903 (32 Stat. 831).*

370. *Chief of Artillery or Chief of Coast Artillery to be member of.*—The Chief of Artillery or Chief of Coast Artillery shall be an additional member of the General Staff Corps, and his other duties shall be prescribed by the Secretary of War. When a vacancy occurs in the office of the Chief of Artillery or Chief of Coast Artillery the President may appoint to such vacancy, by and with the advice and consent of the senate, an officer selected from the coast artillery, who shall serve for a period of four years unless reappointed for further periods of four years; and any officer who shall hereafter serve as Chief of Artillery or Chief of Coast Artillery

[1] See paragraph 366, ante; see, also, note to paragraphs 370 and 371.
[2] See Article 58, A. R., 1913.
[3] By section 3, act of August 24, 1912 (37 Stat. 591), the Quartermaster Corps shall be subject to the supervision of the Chief of Staff to the extent the departments hereby consolidated into said corps have heretofore been subject to such supervision under the terms of existing law. (See paragraph 503, post.)

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shall, when retired, be retired with the rank, pay, and allowances authorized by law for a brigadier-general on the retired list. The position vacated by an officer appointed Chief of Artillery or Chief of Coast Artillery shall be filled by promotion in that arm according to existing law, but the officer thus appointed shall continue in the same lineal position in his arm which he would have held if he had not been so appointed, and shall be an additional number in the grade from which he was appointed or to which he may be promoted: *Provided*, That there shall not be at any time in the coast artillery more than one additional officer by reason of the appointment of a Chief of Artillery or Chief of Coast Artillery and the relief of an officer from such duty.[1] *Sec. 2, Act of Jan. 25, 1907 (34 Stat. 861)*.

371. *Chief of Division of Militia Affairs to be member of.*—Hereafter the Chief of the Division of Militia Affairs, Office of the Chief of Staff, shall be detailed from the general officers of the line of the Army, and while so serving shall be an additional member of the General Staff Corps.[2] *Act of Mar. 3, 1911 (36 Stat. 1037)*.

(For the creation and functions of the Division of Militia Affairs, see War Department Orders A, February 12, 1908.)

372. *Clerks, etc., in office of Chief of Staff not to be assigned to duty in bureaus of War Department.*—That no clerk, messenger, or laborer at headquarters of divisions, departments, posts commanded by general officers, or office of the Chief of Staff shall be assigned to duty with any bureau in the War Department.[3] *Act of Mar. 2, 1913 (37 Stat. 707)*.

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[1] The laws which created the offices of the Chief of Coast Artillery and the Chief of the Division of Militia Affairs provided that they should be considered as additional members of the General Staff Corps. The act of February 14, 1903 (32 Stat. 831), established the office of Chief of Staff and the General Staff Corps and prescribed the composition and duties of the same. Subsequently to the acts making the chiefs of the Artillery Corps and of the Division of Militia Affairs, respectively, additional members of the General Staff Corps, Congress by section 5 of the act of August 24, 1912 (37 Stat. 594), prescribed anew the composition of the General Staff Corps and specified the manner of details thereto. The eighth section repealed all laws inconsistent with the terms of said act. *Held*, that neither the repealing clause in said section 8, nor the provision prescribing anew the composition of the General Staff Corps and the manner of making details thereto, repealed the laws constituting the Chief of the Artillery Corps and the Chief of the Division of Militia Affairs additional members of the General Staff, nor did such legislation affect their relations to the General Staff Corps; and that said officers continue to be such additional members. (Bulletin No. 1 (Dig. Opins. J. A. G.), Jan. 20, 1913.)

[2] See note to preceding paragraph.

[3] The annual appropriation act for the Army for several years has contained a similar proviso.

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CHAPTER XIV.

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373. *Heads of departments.*—When vacancies shall occur in the position of chief of any staff corps or department the President may appoint to such vacancies, by and with the advice and consent of the Senate, officers of the Army at large not below the rank of lieutenant-colonel, and who shall hold office for terms of four years. When a vacancy in the position of chief of any staff corps or department is filled by the appointment of any officer below the rank now provided by law for said office, said chief shall, while so serving, have the same rank, pay, and allowances now provided for the chief of such corps or department. *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

374. *Same—Chief to be selected from permanent officers of corps.*—So long as there remain in service officers of any staff corps or department holding permanent appointments, the chief of such staff corps or department shall be selected from the officers so remaining therein. *Id.*

375. *Same—Detailed officers eligible for permanent appointment.*—That hereafter whenever the number of officers holding permanent appointments in any staff corps or staff department of the Army, except the Quartermaster Corps, shall have been reduced below four and a vacancy shall occur in an office above the grade of colonel in said corps or department, any officer of the Army with rank above that of major who shall have served creditably for not less than four years by detail in said corps or department under the provisions of section twenty-six of the Act of Congress approved February second, nineteen hundred and one, shall, in addition to officers otherwise eligible, be eligible for appointment to fill said vacancy. *Act of Apr. 27, 1914 (38 Stat. 356).*

376. *Same—Retirement.*—Any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for the retirement of such corps or department chief. *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

377. *Promotions in staff corps and departments.*—That so long as there remain any officers holding permanent appointments in the Adjutant-General's Department, the Inspector-General's Department, the Quartermaster's Department, the Subsistence Department, the Pay Department, the Ordnance Department, and the Signal Corps, including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods

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for which the officers so promoted shall hold their appointments. *Sec. 26, id.*

378. *Details to staff corps and departments.*—When any vacancy, except that of the chief of the department or corps, shall occur which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps after the original vacancies created by this act shall have been filled. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Id.*

379. *Term of detail to staff corps and departments.*—All officers so detailed shall serve for a period of four years, at the expiration of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they shall have served two years with the line. *Id.*

(For special rules in regard to officers serving details in the Ordnance Department, see chapter relating to that department.)

380. *Appointments and details.*—No officer hereafter detailed or appointed under the provisions of section twenty-six of the Act of February second, nineteen hundred and one, who has less than four years to serve from the date of his detail or appointment to the date of his retirement shall serve under such detail or appointment or be paid as if on the active list beyond the date of his retirement. *Act of June 30, 1902 (32 Stat. 509).*

381. *Certain officers appointed to rank above that of colonel to retain relative position in corps or arm.*—Hereafter, except as otherwise provided herein, when any officer shall under the provisions of section twenty-six of the act of Congress approved February second, nineteen hundred and one, be appointed to an office with rank above that of colonel, his appointment to said office and his acceptance of the appointment shall create a vacancy in the arm, staff corps, or staff department from which he shall be appointed, and said vacancy shall be filled in the manner prescribed by existing law, but he shall retain in said arm, staff corps, or staff department, the same relative position that he would have held if he had not been appointed to said office, and he shall return to said relative position upon the expiration of his appointment to said office unless he shall be reappointed thereto; and if under the operation of this proviso the number of officers of any particular grade in any arm, staff corps, or staff department, shall at any time exceed the number authorized by law, no vacancy occurring in said grades shall be filled until after the total number of officers therein shall have been reduced below the number authorized by law; but nothing in this

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proviso shall be held to apply in the case of any officer who now holds a four-year appointment to an office with rank above that of colonel, and whose return to the relative position that he would have held if he had not been appointed to said office is not possible under existing law.[1] *Sec. 5, Act of Aug. 24, 1912 (37 Stat. 594).*

382. *Certain officers not reappointed in staff corps or staff departments may be appointed to former positions.*—That hereafter whenever the President shall deem it inadvisable to reappoint, at the end of a four-year term, any officer who, under the provisions of section twenty-six of the Act approved February second, nineteen hundred and one, or Acts amendatory thereof, has been appointed for such a term, in any staff corps or staff department, to an office with rank above that of colonel, but whose commission in the lower grade held by him in said staff corps or staff department at the time of his appointment under said Act to an office of higher grade has been vacated, the President may, by and with the advice and consent of the Senate, appoint said officer to be an officer of the grade that he would have held, and to occupy the relative position that he would have occupied, in said staff corps or staff department if he had not been appointed to said office with rank above that of colonel; and if under the operation of this proviso the number of officers of any particular grade in any staff corps or staff department shall at any time exceed the number authorized by law other than this Act, no vacancy occurring in said grade shall be filled until after the total number of officers therein shall have been reduced below the number so authorized. *Act of Apr. 27, 1914 (38 Stat. 356).*

383. *Vacancies due to details.*—Each position vacated by officers of the line transferred to any department of the staff for tours of service under this act shall be filled by promotion in the line until the total number detailed equals the number authorized for duty in such department. Thereafter vacancies caused by details from the line to the staff shall be filled by officers returning from tours of staff duty. If under the operation of this act the number of officers returned to any particular arm of the service at any time exceeds the number authorized by law in any grade, promotions to that grade shall cease until the number has been reduced to that authorized. *Sec. 27, Act of Feb. 2, 1901 (31 Stat. 755).*

384. *Present for duty with troops.*—That hereafter in time of peace whenever any officer holding a permanent commission in the line of the Army with rank below that of major shall not have been actually present for duty for at least two of the last preceding six years with a troop, battery, or company, of that branch of the Army in which he shall hold said commission, such officer shall not be de-

[1] Held that this section does not apply to the position of Chief of the Bureau of Insular Affairs. (Bulletin No. 4 (Dig. Op. J. A. G.), Feb. 1, 1913.)

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tached nor permitted to remain detached from such troop, battery, or company, for duty of any kind; and all pay and allowances shall be forfeited by any superior for any period during which, by his order, or his permission, or by reason of his failure or neglect to issue or cause to be issued the proper order or instructions at the proper time, any officer shall be detached or permitted to remain detached in violation of any of the terms of this proviso; but nothing in this proviso shall be held to apply in the case of any officer for such period as shall be actually necessary for him, after having been relieved from detached service, to join the troop, battery, or company, to which he shall belong in that branch in which he shall hold a permanent commission, nor shall anything in this proviso be held to apply to the detachment or detail of officers for duty in the Judge Advocate General's Department or in the Ordnance Department, or in connection with the construction of the Panama Canal until after such canal shall have been formally opened, or in the Philippine Constabulary until the first day of January, nineteen hundred and fourteen, or to any officer detailed, or who may be hereafter detailed, for aviation duty. And hereafter no officer holding a permanent commission in the Army with rank below that of major shall be detailed as assistant to the Chief of the Bureau of Insular Affairs with rank of colonel, or as commanding officer of the Porto Rico Regiment of Infantry, or as chief or assistant chief (Director or Assistant Director) of the Philippine Constabulary, and no other officers of the Army shall hereafter be detailed for duty with the said Constabulary except as specifically provided by law.[1] *Act of Aug. 24, 1912 (37 Stat. 571).*

385. *Service as staff officer.*—That hereafter, in determining the eligibility, under the provisions of the Act of Congress approved August twenty-fourth, nineteen hundred and twelve, of troop, battery, or company officers for detail as officers of the various staff corps and departments of the Army, except the General Staff Corps, service actually performed by any such officer with troops prior to December fifteenth, nineteen hundred and twelve, as a regimental, battalion, or squadron staff officer, shall be deemed to have been duty with a battery, company, or troop. *Act of Mar. 2, 1913 (37 Stat. 706).*

386. *Promotions after fourteen years' service.*—When any lieutenant of the Corps of Engineers or Ordnance Corps or Signal Corps has served fourteen years' continuous service as lieutenant, he shall be promoted to the rank of captain, on passing the examination provided by the preceding section, but such promotion shall not authorize an appointment to fill any vacancy, when such appointment would increase the whole number of officers in the corps beyond the number fixed by law; nor shall any officer be promoted before officers of the same grade who rank him in his corps. *Sec. 1207, R. S., as amended by sec. 7, Act of Oct. 1, 1890 (26 Stat. 654).*

[1] Also included in par. 937, and see par. 938½, post.

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387. *Disbursing officers' bonds.*—All officers of the Quartermaster's, Subsistence, and Pay Departments, the chief medical purveyor and assistant medical purveyors, and all store-keepers shall, before entering upon the duties of their respective offices, give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for all public moneys and property which they may receive. The President may, at any time, increase the sums so prescribed. But the Quartermaster-General shall not be liable for any money or property that may come into the hands of the subordinate officers of his department.[1] *Sec. 1191, R. S.*

388. *Increase of bonds.*—The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers,

[1] Officers of the Army and Navy are excepted from the provisions of section 3614, Revised Statutes, which require all special agents employed by the heads of the several Executive Departments in the disbursement of the public moneys to give bonds in such form and with such security as such heads of departments may approve. This section does not apply to all commissioned officers of the Army who may be required to act as disbursing officers, but to such only as are regularly appointed disbursing officers and who are required, as such, to give bonds. (Ex parte Randolph, 2 Brockenbrough, 447. See also U. S. *v.* Kirkpatrick, 9 Wh., 720; U. S. *v.* Vanzandt, 11 Wh., 184; Dox *v.* Postmaster-General, 1 Pet., 325; U. S. *v.* Linn, 15 Pet., 290.)

A bond to the United States, conditioned that a property and disbursing officer of the War Department shall faithfully discharge his duties and faithfully account for public money and property committed to his charge, takes effect on the day when it is accepted by the Government, and is to be regarded as of that date. (Moses *v.* U. S., 166 U. S., 571.) A surety on the bond of one in official relation with the Government is himself in contract relation with it, and, as he is liable to be sued by it, he has the right to sue it whenever a balance is due from it to which, on the principle of subrogation, he will ultimately be entitled. (Shwarz *v.* U. S., 35 Ct. Cls., 303; Behan *v.* U. S., 18 id., 687, 110 U. S., 338; Hitchcock *v.* U. S., 27 Ct. Cls., 185, 164 U. S., 227; Pope *v.* U. S., 14 id., 446.) No jurisdiction is conferred upon the Comptroller of the Treasury to render a decision, at the request of the head of a department, upon the question whether the filing of a new bond relieves the sureties on a prior bond of the same official from liability after the date of the new bond, such a question not involving a payment to be made under the head of the department. (Section 8, act of July 31, 1894 (28 Stat., 20).)

The giving of bond is not necessary to entitle persons appointed to office in the Army requiring the disbursement of money, to begin to receive pay; they are entitled, like other officers, to be paid upon the acceptance of their appointments, according to par. 1448, Army Regulations, whether they have at that time furnished their bonds or not. (XVI Op. Att. Gen., 38.) The expense incurred by an officer in furnishing the bond required by law of all disbursing officers of the Government, is not a proper charge against the Government, even though the officer serves without compensation. (II Comp. Dec., 262; U. S. *v.* Van Duzee, 140 U. S., 171.)

Section 1191, Revised Statutes, requires bonds only of certain disbursing officers specifically named. In the absence of any express provision of law, prescribing that bonds shall be furnished by other disbursing officers, the President, in his discretion, and for the better security of the public funds, may, through the head of the proper department, require such bonds to be furnished. (Dig. Opin. J. A. G., par. 544.)

Bonds may be required by the Government from officers appointed to places of trust, though there is no statutory authority to take such bonds, and they will be valid as common-law obligations. In a bond with sureties, given by

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and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, Commissary-General, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments.[1] *Sec. 3639, R. S.*

389. *Security companies as sureties.*—Whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified, is by the laws of the United States required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States or of any State having power to guarantee the fidelity of persons holding

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an officer of the Government, it is sufficient to make the bond valid as a common-law obligation that it is voluntarily given and that the office and the duties assigned to the officer and covered by the bond are duly authorized by law. (U. S. *v.* Tingey, 5 Pet., 115; U. S. *v.* Bradley, 10 id., 343, 360; U. S. *v.* Rogers, 28 Fed. Rep., 607; VI Opins. At. Gen., 24.)

A bond can not be extended beyond the period of the original obligation so as to continue to bind the sureties, without their consent. Nor can an expired bond be revived so as to bind the sureties without their consent. The Secretary of War (or President) has no power to release the sureties in an official bond from their liability to the United States. (VII Opins. At. Gen., 62.) A neglect by the Government to institute suit on a bond does not discharge the sureties; laches not being in such cases imputable to the United States. (U. S. *v.* Kirkpatrick, 9 Wheat., 720; id., par. 549.)

One of two (or several) sureties can not withdraw independently from his obligation; and if allowed to do so by the obligee, the other surety (or sureties) will be released as to him. But the Secretary of War is not empowered to release the sureties on a disbursing officer's bond. (Id., par. 554.)

The law of the place at which a contract is made governs as to its interpretation, except where the contract is to be performed elsewhere, in which case the law that governs in this respect is the law of the place of performance. An official bond, made to the United States, wherever actually signed, is—as has been held by the Supreme Court—a contract made and to be performed at Washington: and by the laws of the District of Columbia the contract of a married woman as surety is not binding. Moreover, it is not the practice of the War Department to accept a feme covert as a surety, and before a female surety will be accepted she is required to make oath that she is single in addition to justifying as required of other sureties. (Id., par. 550.)

If after the execution of a bond a material change be made in the name or description of the principal, by erasure, interlineation, or otherwise, without the assent of the sureties or a surety, even though such change be made to correct a mistake, the surety or sureties not consenting will be released. In a case of such an alteration, recommended that a new bond be required. (Id., par. 555. See, also, id., paragraphs 554–560.)

While department regulations duly promulgated have the force of law, in a limited sense, they can not enlarge or restrict the liability of an officer on his bond. (Meads *v.* U. S., 81 Fed. Rep., 684.)

(See, also, in connection with this subject the chapters entitled Treasury Department, Department of Justice, Quartermaster Corps, Medical Corps, and contracts and purchases.)

[1] The Government has the power, through the head of a department, to take a bond from a disbursing officer, though there is no law or general regulation requiring it; and a bond is none the less a voluntary bond because demanded by the superior officer, if not illegally extorted. (Moses *v.* U. S., 166 U. S., 571.)

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positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided*, That such recognizance, stipulation, bond, or undertaking be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guarantee company or by any particular guarantee company.[1] *Act of Aug. 13, 1894 (28 Stat. 279)*.

390. *Same—Agents to be appointed.*—No such company shall do business under the provisions of this act beyond the limits of the State or Territory under whose laws it was incorporated and in which its principal office is located nor beyond the limits of the District of Columbia, when such company was incorporated under its laws or the laws of the United States and its principal office is located in said District, until it shall, by a written power of attorney, appoint some person residing within the jurisdiction of the court for

[1] *Execution, sealing, etc.*—The bond should of course be executed by all the parties—obligor and sureties. It has been held by the United States Supreme Court that an official bond, though without seals, may be good as a contract at common law. To avoid, however, any questions that might arise from the absence of a seal, advised (February, 1868) that formal seals "of wax or other adhesive substance," be in all cases required to be affixed by the subscribing parties. (Dig. Opin., J. A. G., par. 534, edition of 1901.)

A bond given by a disbursing officer of the Army (or any bond required by the War Department) wherein the Secretary of War is made the obligee, is in incorrect form. The obligee should be—The United States of America. (Id., par. 542.)

A bond should of course be dated, but the omission of the date will not affect the validity of the instrument, as the true date of execution can be proved aliunde, in the event of a suit on the bond. (Id., par. 543.)

The seal of both obligor and sureties must be a formal one, of wafer, wax, or other adhesive substance. A mere scroll made with the pen is not accepted as a substitute for a seal in the War Department. A corporation obligor should affix its corporate seal if it has one. But the fact that a corporation has not adopted a corporate seal will not affect the validity of its execution of a bond in which it is principal or surety, provided some form of seal be added to its signature. A corporation may make and use any seal, in its discretion, in the same manner as a private individual. (Id., par. 544.)

Justification of sureties.—Of two or more sureties to an official bond, each, according to the regulation, should justify separately; a justification in joint form is irregular and improper. An affidavit of justification should properly be expressed in the first person; not in the third. (Id., par. 540.)

The affidavit of justification of a surety should be dated, so that it may appear when he was worth the amount specified. The names of the sureties in the justification should be identical with those inserted in the body of the bond. Their names should not be omitted to be recited in the bond with the name of the principal. (Id., par. 551.)

The affidavit of justification should be taken before some officer, like a notary public, having authority to administer oaths for general purposes and whose official character is authenticated by his seal. Under section 19 of act of Congress of May 28, 1896 (29 Stat., 184), United States commissioners and all clerks of United States courts are authorized to administer oaths generally. (3 Comp. Dec., 65.) But as the justification is no part of the bond, and the administration of the oath by an official not competent to administer it does not affect the validity of the bond, the irregularity of the justification, where there is nothing to show that the oath was not taken in good faith by the

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the judicial district wherein such suretyship is to be undertaken, who shall be a citizen of the State, Territory, or District of Columbia, wherein such court is held, as its agent, upon whom may be served all lawful process against such company, and who shall be authorized to enter an appearance in its behalf. A copy of such power of attorney, duly certified and authenticated, shall be filed with the clerk of the district court of the United States for such district at each place where a term of such court is or may be held, which copy, or a certified copy thereof, shall be legal evidence in all controversies arising under this act. If any such agent shall be removed, resign, or die, become insane, or otherwise incapable of acting, it shall be the duty of such company to appoint another agent in his place, as hereinbefore prescribed, and until such appointment shall have been made, or during the absence of any agent of such company from such district, service of process may be upon the clerk of the court wherein such suit is brought, with like effect as upon an agent appointed by the company. The officer executing such process

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surety, may be waived by the Secretary of War, and in practice it is now (May, 1893) waived, and the bond accepted if otherwise valid. And in case where the seal of the notary was omitted, recommended that the instrument be returned to have the seal impressed upon the certificate, for the purpose of such authentication, which would be wanting without it. (Id., par. 553.)

Sureties.—The obligation of each surety must be for the whole amount of the penalty; the regulation requiring that the sureties "shall be jointly and severally bound for the whole amount of the bond." So, where the penalty in a quartermaster's joint and several official bond was $10,000, and the sureties, in executing the same, assumed to be bound only in the sum of $5,000 each, the words "for five thousand dollars" being written under each signature—held that the instrument was contradictory, did not conform to the regulations, and should not be accepted. And similarly held in a case of a bond with a penalty of $40,000, where the sureties wrote opposite their signatures, respectively, "for $35,000," "for $5,000." Sureties can not qualify their obligation by thus limiting their personal liabilities. (Id., par. 535.)

There is no statute or regulation prohibiting an officer of the Army from acting as a surety on the official bond of another officer. Such a relation, however, is not one to be favored. (Id., par. 536.)

Paragraph 572 of the Regulations contemplates plural sureties with bonds of disbursing officers. A justification of a surety, however, is no part of the bond, and as the object of the justification is to satisfy the Secretary of War that the surety is good for double the penalty, the Secretary, where amply satisfied that one certain person offered or executing as surety is pecuniarily sufficient for such amount, would be authorized to accept him (on his properly justifying) as sole surety, and to waive any further surety or sureties with the instrument. A subordinate of course can have no such authority. In view, however, of the terms of the regulation and of the practice under it, this authority would of course most rarely be exercised in cases of disbursing officers' bonds. (Id., par. 537.)

A captain of the commissary department having given bond in a penalty of $12,000, one of his sureties deceased. Paragraph 563, Army Regulations, 1895, prescribes that "the sureties to bonds given by disbursing officers shall be bound jointly and severally." The officer offered a new bond with one surety in a penalty of $6,000. Held that such security would not be legally sufficient, but that a new joint and several bond in the penalty of $12,000 would be required. (Id., par. 552.)

For opinions respecting security companies as sureties see Dig. Opin., J. A. G., pars. 596–602, edition of 1901.

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upon such clerk shall immediately transmit a copy thereof by mail to the company, and state such fact in his return. A judgment, decree, or order of a court entered or made after service of process as aforesaid shall be as valid and binding on such company as if served with process in said district. *Sec. 2, id.*

391. *Same—Companies to deposit copy of charter, etc.*—Every company, before transacting any business under this Act, shall deposit with the Secretary of the Treasury of the United States a copy of its charter or articles of incorporation, and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. If the said Secretary of the Treasury shall be satisfied that such company has authority under its charter to do the business provided for in this Act, and that it has a paid-up capital of not less than two hundred and fifty thousand dollars, in cash or its equivalent, and is able to keep and perform its contracts, he shall grant authority in writing to such company to do business under this Act. *Act of Mar. 23, 1910 (36 Stat. 241).*

392. *Same—Companies to file quarterly statement.*—Every such company shall, in the months of January, April, July, and October of each year, file with the said Secretary of the Treasury a statement, signed and sworn to by its president and secretary showing its assets and liabilities, as is required by section three of this Act. And the said Secretary of the Treasury shall have the power, and it shall be his duty, to revoke the authority of any such company to transact any new business under this Act whenever in his judgment such company is not solvent or is conducting its business in violation of this Act. He may institute inquiry at any time into the solvency of said company and may require that additional security be given at any time by any principal when he deems such company no longer sufficient security. *Id.*

393. *Same—United States shall not pay premium of bond for officer or employee.*—Until otherwise provided by law no bond shall be accepted from any surety or bonding company for any officer or employee of the United States which shall cost more than thirty-five per centum in excess of the rate of premium charged for a like bond during the calendar year nineteen hundred and eight: *Provided*, That hereafter the United States shall not pay any part of the premium or other cost of furnishing a bond required by law or otherwise of any officer or employee of the United States. *Act of Aug. 5, 1909 (36 Stat. 125).*

[See Circular 85, War Department, 1909.]

394. *Bonds to be examined at certain times.*—Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every

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officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.[1] *Sec. 5, Act of Mar. 2, 1895 (28 Stat. 807).*

395. *Bonds to be renewed.*—Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor.[2] *Id, 808.*

396. *Liability of sureties.*—The nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States. *Id.*

397. *Where deficiency is discovered.*—Hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.[3] *Act of Aug. 8, 1888 (25 Stat. 387).*

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[1] United States district attorneys are not required or authorized to make the examination into the sufficiency of the sureties on official bonds required by section 5 of the act of March 2, 1895 (28 Stat. 807).

[2] The expenses incurred by an officer in furnishing the bond required by law of all disbursing officers of the Government is not a proper charge against the Government, even though the officer serves without compensation. (II Comp. Dec., 262, see par. 396.)

[3] For instructions respecting the recovery of balances due the United States on final settlements of bonded officers, see Vol. V, Comptroilers' Decisions, pp.

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398. *When sureties are released.*—If, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.[1] *Sec. 2, id.*

399. *Duties of disbursing officers as to public money.*—It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law [and draw for the same only in favor of the persons to whom payment is made]; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. *Sec. 3620, R. S.*

(See, however, par. 184, ante; see also sec. 87, Criminal Code (par. 419, post, and par. 592, post). For provision of law requiring every disbursing officer annually on the 30th of June to make report to the Secretary of the Treasury of all checks issued by him which may have been outstanding for three years and more, see par. 183, ante.)

400. *Disbursing officers, etc., to deposit funds.*—Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the assistant treasurer, or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenue and debts due to the Post-Office Department shall be paid into the Treasury in the manner now required by law.[2] *Sec. 3621, R. S.*

988–990; for methods of keeping and rendering accounts by disbursing officers not under bond, see id., pp. 990–991.

The regulations of the Treasury Department are imperative, and expressly prohibit the transfer of funds of any character for which an officer is accountable from one bond to another, and when this regulation is violated it becomes necessary for the officer to deposit the sum transferred as a credit to his first bond, or else procure the admission of the sureties on the second bond that the officer actually had the sum in hand when it was executed, and that they are liable on said bond for the same. (3 Dig. Comp. Dec., 13. See also U. S. *v.* McLane, 74 Fed. Rep., 153; U. S. *v.* Wade, 75 id., 261.)

[1] For statutory provisions respecting distress warrants, see the chapter entitled The Treasury Department.

[2] In accordance with the provisions of the above sections any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some

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401. *Exchanges of funds restricted.*—No exchange of funds shall be made by any disbursing officer or agent of the Government, of any

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assistant treasurer, or by special direction of the Secretary of the Treasury with a national bank depositary nearest or most convenient, except—

(1) Any disbursing officer of the War Department specially authorized by the Secretary of War, when stationed on the extreme frontier or at places far remote from such depositaries, may keep, at his own risk, such moneys as may be intrusted to him for disbursement.

(2) Any officer receiving money remitted to him upon specific estimates may disburse it accordingly, without waiting to place it in a depositary, provided the payments are due and he prefers this method to that of drawing checks. (Treas. Circ. of 1897. G. O. 53, A. G. O., 1897.)

Every disbursing officer, when opening his first account, before issuing any checks, will furnish the depositary on whom checks are drawn with his official signature duly verified by some officer whose signature is known to the depositary. (Id.)

Any check drawn by a disbursing officer upon moneys thus deposited must be in favor of the party, by name, to whom the payment is to be made, and payable to "order," or "bearer," with these exceptions:

(1) To make payments of individual pensions, checks for which must be made payable to "order," (2) to make payments of amounts not exceeding twenty dollars, (3) to make payments at a distance from a depositary, and (4) to make payments of fixed salaries due at a certain period; in either of which cases except the first, any disbursing officer may draw his check in favor of himself, or "order," or "bearer," for such amount as may be necessary for such payment, but in the last-named case the check must be drawn not more than two days before the salaries become due.

Any disbursing officer or agent drawing checks on moneys deposited to his official credit, must state on the face or back of each check the object or purpose to which the avails are to be applied, except upon checks issued in payment of individual pensions, the special form of such checks indicating sufficiently the character of disbursement. If the object or purpose for which any check of a public disbursing officer is drawn is not stated thereon, as required, or if any reason exists for suspecting fraud, the office or bank on which such check is drawn will refuse its payment.

Such statement may be made in brief form, but must clearly indicate the object of the expenditure, as, for instance, "pay," "pay roll," or "payment of troops," adding the fort or station; "purchase of subsistence" or other supplies; "on account of construction," mentioning the fortification or other public work for which the payment is made; "payments under $20," etc.

Checks will not be returned to the drawer after their payment, but the depositary with whom the account is kept shall furnish the officer with a monthly statement of his deposit account. (Id.)

No allowance will be made to any disbursing officer for expenses charged for collecting money on checks.

Whenever any disbursing officer of the United States shall cease to act in that capacity he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank, and, if so, what checks, if any, he has drawn against the same, which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished, the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom.

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn by him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud. Any check previously drawn by him and not presented for payment within four months of its date will not be paid until its correctness shall have been attested by the Secretary or Assistant Secretary of the Treasury. (Id.)

Deposits to the credit of the Treasurer of the United States on account of repayment of disbursing funds must be made with the officer or bank in which such funds are to the credit of the disbursing officer. (Id.)

For every deposit made by a disbursing officer, to his official credit, a receipt in form as below shall be given, setting forth its serial number and the place

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grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the money so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper Department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office or restored to his trust and the performance of his duties, as the President may deem just and proper. *Sec. 3651, R. S.*

402. *Premiums on sales to be accounted for.*—No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office. *Sec. 3652, R. S.*

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and date of issue; the title of each officer shall be expressed, and the title of the disbursing account shall also show for what branch of the public service the account is kept, as it is essential for the proper transaction of departmental business that accounts of moneys advanced from different bureaus to a disbursing officer serving in two or more distinct capacities be kept separate and distinct from each other, and be so reported to the department both by the officer and the depositary, the receipt to be retained by the officer in whose favor it is issued:

No. —— Office of the U. S. (Assistant Treasurer or Depositary).
———, ———, 189—.

Received of ———, ——— dollars, consisting of ———, to be placed to his credit as ———, and subject only to his check in that official capacity.
$———.
——— ———.
United States (Assistant Treasurer or Depositary.)

These regulations are intended to supersede those of August 24, 1876. (See G. O. 53, A. G. O., 1897.)

A disbursing officer who deposits money in a bank, not designated as a depositary in accordance with the requirements of sections 3620 and 3639 of the Revised Statutes, is liable, with his sureties, for any loss that may arise from the failure of said bank. (XX Opin. Att. Gen., 24.)

(See par. 417 as to funds received as the value of stores transferred to the Philippine government.)

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403. *Proceeds of sales.*—The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department. *Sec. 3617, R. S.*

(See remarks which follow par. 404. On the general question of the disposition to be made of the proceeds of sale see A. R. 1913, pars. 617–19.)

404. *Proceeds of sales of materials.*—All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers or soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law.[1] *Sec. 3618, R. S.*

(See note to par. 406.)

405. *Proceeds of certain sales, etc., of materials.*—All moneys received from the leasing or sale of marine hospitals, or the sale of revenue cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, [or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army,] or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.[2] *Sec. 3692, R. S.*

(See note to par. 406.)

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[1] Under section 3618 of the Revised Statutes, all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, with certain specified exceptions, are to be deposited and covered into the Treasury as miscellaneous receipts on account of "proceeds of Government property," and are not to be withdrawn or applied, except in consequence of a subsequent appropriation made by law. (3 Dig. 2d Comp. Dec., 1249.)

All proceeds of sales of public property covered into the Treasury as miscellaneous receipts should be charged and credited on account of "proceeds of Government property," as contemplated by section 3618 of the Revised Statutes. (Id., 1255.)

[2] Under section 3692 of the Revised Statutes all moneys received from the sale of materials, stores, or supplies to officers and soldiers of the Army can be applied to the liquidation of liabilities against the appropriation out of which they were originally expended, only during the fiscal year in which the sale was made. (3 Dig. 2d Comp. Dec., 1246.)

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406. *Expenses of sales.*—From the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the accounting officers of the Treasury, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be.[1] *Act of June 8, 1896 (29 Stat. 268).*

(See chapter entitled Quartermaster Corps as to disposal of proceeds of subsistence stores sold to officers, etc. See also chapter entitled Ordnance Department for the laws regulating the disposal of proceeds from sale of obsolete ordnance material.)

407. *Advances of public money prohibited.*—No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment.[2] It shall, however, be lawful,

[1] The act of June 8, 1896, authorizing the payment of expenses, "as approved by the accounting officers of the Treasury," incurred in the sale of old material, etc., from the gross proceeds thereof, and the payment into the Treasury of the net proceeds only, does not require that such expenses shall be so approved before payment, but simply that an itemized account thereof shall be rendered to the accounting officers for settlement as any other item of expenditure of Government funds. (III Comp. Dec., 149.) The course authorized by the act of June 8, 1896, in the payment of expenses of sales of old materials from the proceeds thereof, and the deposit in the Treasury of the net proceeds only, should be adopted in all cases, although there may be an appropriation available for the payment of expenses incurred in such sales. (Id., 190.)

[2] In the case of disbursing officers the policy of the Government has been to acknowledge no payments as made on its behalf save those which are authorized by law. If an officer makes a mistake of law the payment is disallowed when his accounts come in for settlement and charged to him as if the money were still in his hands. (McKim *v.* U. S., 12 Ct. Cls., 504, 532.) Such officers are special agents with very limited authority. Their duties are ministerial; they are to pay the money according to the law and the facts in each case, and if they make mistakes in either they are personally liable themselves, and the Government may also, without doubt, maintain an action to recover back the money from the person wrongfully receiving it. No discretion or authority to decide controverted questions of law is intrusted to such officers. (See dissenting opinion of Richardson, J., in McKee *v.* U. S., 12 Ct. Cls., 504, 551.)

A disbursing officer is prohibited by section 3648, Revised Statutes, from paying more than a proper proportion of the entire contract price agreed upon for the transportation of public property when only a portion of the property has been delivered. (III Comp. Dec., 221. See, also, id., 187.)

An advance of public money made by a paymaster of the Army to an officer ordered to a distant station, when made by direction of the President as provided by section 3648 of the Revised Statutes, to provide for the pay of such officer for a future period, is not a payment for services for the correctness of which the paymaster is responsible, but an advance of public money to the officer in question for which he, and not the paymaster, is accountable to the United States. (IV id., 250.)

The payment of express charges in advance is prohibited by this section. (Id., 544.)

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under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they are entitled can not be regularly effected. *Sec. 3648, R. S.*

(See, however, in chapter entitled Quartermaster Corps a provision for the payment in advance of troops embarking for the Philippines.)

408. *Public moneys not to be used for payment, etc., of expenses of commissions, etc.*—Hereafter no part of the public moneys, or of any appropriation heretofore or hereafter made by Congress, shall be used for the payment of compensation or expenses of any commission, council, board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law; nor shall there be employed by detail, hereafter or heretofore made, or otherwise personal services from any executive department or other government establishment in connection with any such commission, council, board, or other similar body. *Sec. 9, Act of Mar. 4, 1909 (35 Stat. 1027).*

409. *Entry of each deposit, transfer, and payment.*—All persons charged by law with the safe keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer. *Sec. 3643, R. S.*

410. *Accounting to be by items.*—Hereafter all officers, agents, or other persons receiving public moneys appropriated by this or any subsequent Army appropriation act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such act. *Act of July 5, 1884 (23 Stat. 113).*

411. *Total amount of appropriation—how determined.*—Hereafter the total amount appropriated in the various paragraphs of an appropriation act shall be determined by the correct footing up of the specific sums or rates appropriated in each paragraph contained therein unless otherwise expressly provided. *Act of May 28, 1896 (29 Stat. 148).*

412. *Inspection of disbursements.*—It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money; also to ascertain whether the dis-

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bursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the inspection department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement. *Act of Apr. 20, 1874 (18 Stat. 33)*.

(See A. R. 897, 901, and 902 of 1913.)

413. *Same—To be reported to Congress.*—That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War. *Sec. 2, id.*

414. *Counterfeit money.*—All United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless" upon all fraudulent notes issued in the form of and intended to circulate as money which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof. *Sec. 5, Act of June 30, 1876 (19 Stat. 64)*.

415. *Accounts to be rendered monthly.*—Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his acccounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail or otherwise to the bureau to which they pertain within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the nonreceipt at the Treasury, or proper bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require.[1] *Sec. 3622, R. S., as amended by Acts of Feb. 27, 1877 (19 Stat. 249), and July 31, 1894 (28 Stat. 209)*.

[1]An account is something which may be adjusted and liquidated by an arithmetical computation. One set of Treasury officers examine and audit the accounts, another set is intrusted with the power of reviewing that examination and with the further power of determining whether the laws authorize the payment of the account when liquidated. But no law authorizes Treasury officials to allow and pass in accounts a number not the result of arithmetical computation upon a subject within the operation of the mutual part of a contract. (Power *v.* U. S., 18 Ct. Cls., 263, 275.) A voucher given by an officer

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416. *Same—In accordance with appropriations.*—All officers, agents, or other persons receiving public moneys, shall render distinct accounts of the application thereof according to the appropriation under which the same may have been advanced to them. *Sec. 3623, R. S.*

417. *Funds derived from transfer of stores to the Philippine government.*—Hereafter all funds received as the value of military stores transferred by the several staff departments of the Army to the Insular Department of the Philippines, or work done, shall be deposited in the Treasury of the United States and remain available during the fiscal year in which the transaction occurred and the following year for the procurement of like military stores to replace those so transferred. *Act of June 12, 1906 (34 Stat. 258).*

(As to the general disposition of funds see par. 401.)

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of the Government, in the regular and ordinary course of his business, for services rendered or articles purchased for the public service, within the scope of his authority and the line of his duty unimpeached, is prima facie evidence of indebtedness on the part of the United States, as therein stated. (Parish *v.* U. S., 2 Ct. Cls., 341; Solomon *v.* U. S., 19 Wall., 17, and 9 Ct. Cls., 54.) In this respect the executive officers who are authorized to make contracts, employ services, or purchase property for the public service, and whose duty it is to see to it that the money certified by them to be due has been actually and fairly earned, within their own knowledge, while acting in their official capacity, differ from the certified balances of the accounting officers. In the examination of claims in the Treasury Department these accounting officers act wholly upon the evidence presented to them by others, and have themselves no personal knowledge of the facts upon which the claims are founded. It is one of the fundamental principles upon which that Department is established—and a useful and nice one it is—that the executive officers who pass upon public accounts shall be different from those who are authorized to make contracts and incur liabilities in the expenditure of public money. (McCann *v.* U. S., 18 Ct. Cls., 445, 447.) The accounts under a contract remain open so long as anything remains to be adjusted or paid. (Parker *v.* U. S., 26 Ct. Cls., 344.)

The first clause of section 3622 of the Revised Statutes, which requires the rendition of accounts monthly, is applicable to every officer who receives advances of public money to be disbursed, and also to every officer who collects and receives fees and revenues which it is his duty to account for. (XIX Opin. Att. Gen., 557.)

The requirement that officers render their accounts monthly is not subject to the direction of the Secretary of the Treasury, excepting in extraordinary cases, where he shall be of opinion that the statutory period ought to be enlarged to meet the special circumstances of such cases. (XIX Opin. Att. Gen., 557.)

For other statutory regulations in respect to the disbursement of and accounting for the public moneys, see sections 3643, 3648, 3678, and 3679 of the Revised Statutes, paragraphs 407, 408, 409, 410, and 411, ante.

Section 5495 of the Revised Statutes provides that the refusal of any person charged with the disbursement of public moneys promptly to transfer or disburse the funds in his hands, "upon the legal requirement of an authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as *prima facie* evidence of such embezzlement." Applying this rule to a military case, it is clear that in the event of such a refusal by a disbursing officer of the Army the burden of proof would be upon him to show that his proceeding was justified and that it would not be for the prosecution to show what had become of the funds. So, where an acting commissary of subsistence, on being relieved, failed to turn over the public moneys to his successor, or to his post commander, when ordered to do so, or to produce such moneys, exhibit vouchers for the same, or otherwise account for their use, when required to do so by the department commander, *held*, that he was properly chargeable with and convicted of embezzlement under this article (sixtieth article of war). (Dig. Opin. J. A. G., par. 114, edition of 1901.)

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418. *Offenses in connection with the safe-keeping and disbursement of the public money; receipting for larger sums than are paid.*—Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years. *Sec. 86, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1105).*

(For other offenses relating to the wrongful use of public money and property, see chapters entitled Department of the Treasury, Contracts and purchases, and Public property.)

419. *Same—Wrongful conversion.*—Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer, or any assistant treasurer, or any authorized depositary, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. *Sec. 87, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1105).*

420. *Same—The loan or conversion of public moneys.—Every* officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. *Sec. 89, id.*

421. *Same—Failure to render accounts.*—Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled and imprisoned not more than ten years. *Sec. 90, id.*

422. *Same—Failure to deposit as required.*—Whoever, having money of the United States in his possession or under his control,

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shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years. *Sec. 91, id.*

423. *Same—To whom foregoing provisions are applicable.*—The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. *Sec. 92, id.*

(The foregoing has reference to secs. 87–91 of the Criminal Code. Of these, secs. 87, 89, 90, and 91 appear in this work as pars. 419–422, respectfully. Sec. 88, having no relation to the military, has not been included.)

424. *Same—Record evidence of embezzlement.*—Upon the trial of any indictment against any person for embezzling public money under any provision of the six preceding sections, it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money. *Sec. 93, id.*

(See remarks following par. 423. U. S. *v.* Gaussen, 19 Wall., 198.)

425. *Same—Prima facie evidence.*—The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement. *Sec. 94, id., 1106.*

426. *Same—Evidence of conversion.*—If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher. *Sec. 95, id.*

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427. *Same—Banker, etc., not authorized depositary receiving public money from disbursing officer, etc.*—Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. *Sec. 96, id.*

(While the penalty provided above does not directly apply to the military, it has been deemed wise to insert the section.)

428. *Same—Embezzlement.*—Any officer connected with, or employed in, the Internal-Revenue Service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both. *Sec. 97, id.*

429. *Making false certificate.*—Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. *Sec. 106, id., 1107.*

430. *Officers, etc., not to prosecute claims against the government.*—Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of

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Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both. *Sec. 109, id.*

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CHAPTER XV.

THE ADJUTANT GENERAL'S DEPARTMENT.

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431. *Organization.*—The Adjutant-General's Department shall consist of one Adjutant-General with the rank of major-general, and when a vacancy shall occur in the office of Adjutant-General on the expiration of the service of the present incumbent, by retirement or otherwise, the Adjutant-General shall thereafter have the rank and pay of a brigadier-general, five assistant adjutants-general with the rank of colonel, seven assistant adjutants-general with the rank of lieutenant colonel, and fifteen assistant adjutants-general with the rank of major: *Provided*, That all vacancies created or caused by this

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section shall, as far as possible, be filled by promotion according to seniority of officers of the Adjutant-General's Department. *Sec. 13, Act of Feb. 2, 1901 (31 Stat., 751).*

(For the law regarding promotions in, and details to, the Adjutant-General's Department see chapter entitled Staff Departments. It has been necessary to include in this chapter certain laws which have been superseded in order to make clear the devolution of the present Adjutant-General's Department. See par. 434.)

432. *The Record and Pension Office.*—The division organized by the Secretary of War in his office for the preservation and custody of the records of the volunteer armies under the name of the Record and Pension Division is hereby established as now organized, and shall hereafter be known as the Record and Pension Office of the War Department. *Act of May 9, 1892 (27 Stat. 27).*

433. *Same—Composition of.*—The officers of the Record and Pension Office of the War Department shall be a chief of said office with the rank of a brigadier-general and an assistant chief of said office with the rank of major: *Provided*, That any person appointed to be Chief of the Record and Pension Office after the passage of this act shall have the rank of colonel. *Sec. 25, Act of Feb. 2, 1901 (31 Stat. 754).*

(See remarks following par. 431.)

434. *Military Secretary's Department, Adjutant-General's Department and Record and Pension Office consolidated.*—The officers of the Adjutant-General's Department, except the Adjutant-General, and the officers of the Record and Pension Office shall hereafter constitute one department of the Army, to be known as the Military Secretary's Department; and the Adjutant-General's Office and the Record and Pension Office, heretofore constituting bureaus of the War Department, shall hereafter constitute a consolidated bureau to be known as the Military Secretary's Office of the War Department. The officers so consolidated shall be borne on one list in the order of rank held by them, and those of them who hold permanent appointments as officers of the Adjutant-General's Department or of the Record and Pension Office shall be entitled to promotion below the grade of brigadier-general, as now provided by law and in the order of their standing on said list. Except as otherwise provided herein, the laws now in force shall continue to govern the appointment, promotion, and detail of all officers of the consolidated department hereby created: *Provided*, That the officers of the said consolidated department shall be subject to the supervision of the Chief of Staff in all matters pertaining to the command, discipline, or administration of the existing military establishment: *Provided further*, That no appointments or details to the grade of assistant adjutant-general with the rank of major shall be made until the number of officers of

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that grade shall be reduced to less than ten, and thereafter the number of officers of said grade in the consolidated department shall be ten: *Provided further*, That of the officers consolidated as hereinbefore provided the senior in rank, who shall be chief of the consolidated department and the title of whose office is hereby changed to that of the military secretary, shall hereafter have the rank of major-general, and the second senior of said officers shall hereafter have the rank of brigadier-general: *Provided further*, That when the office of Military Secretary with the rank of major-general shall hereafter become vacant, it shall not be filled with said rank, and thereafter the chief of the Military Secretary's Department shall have the rank of a brigadier-general with the title of The Military Secretary, and there shall be only one officer above the rank of colonel in the said department. Except as hereinafter provided, the remaining offices of the consolidated department shall retain the titles that they now bear: *Provided further*, That when the office of Adjutant-General shall become vacant the vacancy so created on the active list of the Army shall not be filled, and thereafter the several officers now designated by the title assistant adjutant-general and by the title assistant chief of the Record and Pension Office shall be designated by the title Military Secretary. *Act of Apr. 23, 1904 (33 Stat. 262)*.

(See par. 436. See also remarks following par. 431.)

435. *Same—Appropriations, etc., to be available for both.*—Whenever the office of the Adjutant-General and the Record and Pension Office shall be consolidated by operation of law, any appropriation available at the time of such consolidation, or that may thereafter become available, for the support of either of those offices shall be equally available for the support of the bureau formed by the consolidation, and all employees provided by law for either of said offices, except such employees as were transferred by the Secretary of War to the Military Information Division of the General Staff prior to April first, nineteen hundred and four, shall be regarded as employees of the consolidated bureau and shall be exclusively engaged upon the work of that bureau as required in the case of the employees of the Record and Pension Office by the Acts making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal years nineteen hundred and four and nineteen hundred and five. *Act of Apr. 27, 1904 (33 Stat. 401)*.

436. *Military Secretary's Department to be known as the Adjutant-General's Department, etc.*—Hereafter the Military Secretary's Department of the Army shall be known as the Adjutant-General's Department, the senior in rank of the officers of said department shall be designated by the title of The Adjutant-General, the other officers of the Department shall be designated by the title of Adjutant-General, and The Military Secretary's Office of the War De-

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partment shall be known as the Adjutant-General's Office. *Act of Mar. 2, 1907 (34 Stat. 1158).*

(The office of major-general provided for in par. 434, as well as the office of brigadier-general for the second senior in the Military Secretary's Department provided for in the same paragraph, have been vacated. There is but one general officer now in the Adjutant-General's Department and he occupies the office of Adjutant-General.)

437. *Duties of assistant adjutants-general.*—Assistant adjutants-general shall, in addition to their own duties, perform those of assistant inspectors-general, when the convenience of the service requires them to do so.[1] *Sec. 1130, R. S.*

(For the law regarding the recruiting service which is under the management of The Adjutant-General, see chapter Enlisted men.)

438. *Duties of Record and Pension Office.*—The Record and Pension Office of the War Department shall, under the Secretary of War, have charge of the military and hospital records of the volunteer armies and the pension and other business of the War Department connected therewith; and all laws or parts of laws inconsistent

[1] The Adjutant-General's Department is the department of records, orders and correspondence of the Army and the militia.

The Adjutant-General is charged, under the direction of the Secretary of War, and subject to the supervision of the Chief of Staff in all matters pertaining to the command, discipline, or administration of the existing military establishment, with the duty of recording, authenticating, and communicating to troops and individuals in the military service all orders, instructions, and regulations issued by the Secretary of War through the Chief of Staff; of preparing and distributing commissions; of compiling and issuing the Army Register and the Army List and Directory; of consolidating the general returns of the Army; of arranging and preserving the reports of officers detailed to visit encampments of militia; of preparing the annual returns of the militia required by law to be submitted to Congress; of managing the recruiting service, and of recording and issuing orders from the War Department remitting or mitigating sentences of general prisoners who have been discharged from the military service.

The Adjutant-General is vested by law with the charge, under the Secretary of War, "of the military and hospital records of the volunteer armies and the pension and other business of the War Department connected therewith"; and of the publication and distribution of the Official Records of the War of the Rebellion. He also has charge of the historical records and business of the permanent military establishment, including all pension, pay, bounty, and other business pertaining to or based upon the military or medical histories of former officers or enlisted men.

The archives of The Adjutant-General's Office include: All military records of the Revolutionary War; the records of all organizations, officers, and enlisted men that have been in the military service of the United States since the Revolutionary War; the records of the movements and operations of troops; the medical and hospital records of the Army; all reports of physical examination of recruits and all identification cards; the records of the Provost Marshal General's Bureau; the records of the Bureau of Refugees, Freedmen, and Abandoned Lands; the Confederate records, including those pertaining to the legislative, executive, and judicial branches of the Confederate government.

Upon the muster out or discharge of volunteers or militia from the service of the United States all the records that pertain to them, and that have not already been filed in The Adjutant-General's office, will be transferred to and filed in that office.

The Adjutant-General takes such steps as are necessary to complete or correct the records in his custody, and answers all calls or inquiries that are answerable from those records and that do not require administrative action by other bureaus of the War Department. (A. R. 1913, Par. 774.)

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with the terms of this act are hereby repealed. *Act of May 9, 1892 (27 Stat. 27).*

439. *Returns and muster rolls of volunteers.*—All returns and muster rolls of organizations of the Volunteer Army and of militia organizations while in the service of the United States shall be rendered to the Adjutant-General of the Army, and upon the disbandment of such organizations the records pertaining to them shall be transferred to and filed in the Record and Pension Office of the War Department. And regimental and all other medical officers serving with volunteer troops in the field or elsewhere shall keep a daily record of all soldiers reported sick, or wounded as shown by the morning calls or reports, and shall deposit such reports with other reports provided for in this section with the Record and Pension Office, as provided herein for other reports, returns and muster rolls. *Sec. 8, Act of Apr. 22, 1898 (30 Stat. 362).*

440. *Military records of Revolutionary War and War of 1812.*—All military records, such as muster and pay rolls, orders, and reports relating to the personnel or the operations of the armies of the Revolutionary war and of the war of eighteen hundred and twelve, now in any of the Executive Departments, shall be transferred to the Secretary of War, to be preserved, indexed, and prepared for publication.[1] *Act of Aug. 18, 1894 (28 Stat. 403).*

441. *Records of Indian wars, etc.*—That the military rolls and records of the Indian wars or any other wars prior to the civil war, now preserved in the Interior or other Departments, be transferred to the War Department, to be preserved in the Record and Pension Office of that Department, and that they shall be properly indexed and arranged for use. *Joint Res. No. 35 of Apr. 28, 1904 (33 Stat. 591).*

442. *Records of the war of the Revolution.*—Within the limits of the appropriation herein made, the Secretary of War is hereby authorized and directed to collect or copy and classify, with a view to publication, the scattered military records of the Revolutionary War, including all troops acting under State authority, and the Secretary of the Navy is hereby authorized and directed to collect or copy and classify, with a view to publication, the scattered naval records of the Revolutionary War.

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[1] The act of July 27, 1892 (27 Stat. 275), had contained the requirement that "the military records of the American Revolution and of the war of eighteen hundred and twelve, now preserved in the Treasury and Interior Departments, be transferred to the War Department, to be preserved in the Record and Pension Division of that Department, and that they shall be properly indexed and arranged for use." The acts of March 2, 1895 (28 Stat. 788), and May 28, 1896 (29 id. 161), authorized the Secretary of War, upon the application of the governor of a State, to furnish to such governor a transcript of the military history of any regiment or company furnished by his State, under such regulations as might be prescribed by the Secretary of War, the expense of preparing such transcript to be borne by the State requesting it.

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SEC. 2. That all such records in the possession or custody of any official of the United States shall be transferred, the military records to the War Department and the naval records to the Navy Department.

SEC. 3. That there is hereby appropriated for the purposes of this Act, out of any money in the Treasury not otherwise appropriated, twenty-five thousand dollars for the War Department and seven thousand dollars for the Navy Department: *Provided*, That the aforesaid sums of money shall be expended, respectively, under the direction of the Secretary of War and the Secretary of the Navy, and that they shall make to Congress each year detailed statements showing how the money herein appropriated has been expended and to whom: *Provided further*, That no part of the sum hereby appropriated shall be used in the purchase of any such records that may be discovered either in the hands of private owners or in public depositories. *Act of Mar. 2, 1913 (37 Stat. 723)*.

443. *Removal of the charge of desertion.*—The charge of desertion now standing on the rolls and records in the Record and Pension Office of the War Department against any soldier who served in the late war in the volunteer service shall be removed in all cases where it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such soldier served faithfully until the expiration of his term of enlistment, or until the first day of May, anno Domini eighteen hundred and sixty-five, having previously served six months or more, and, by reason of absence from his command at the time the same was mustered out, failed to be mustered out and to receive an honorable discharge, or that such soldier absented himself from his command, or from hospital while suffering from wounds, injuries, or disease received or contracted in the line of duty and was prevented from completing his term of enlistment by reason of such wounds, injuries, or disease. *Sec. 1, Acts of Mar. 2, 1889 (25 Stat. 869); May 9, 1892 (27 id. 27)*.

(The last cited act merely serves to alter the wording of the earlier act by changing the place of custody of the records from the office of the Adjutant-General to the Record and Pension Office.)

444. *Same—Application for.*—The Secretary of War is hereby authorized to remove the charge of desertion from the record of any regular or volunteer soldier in the late war upon proper application therefor, and satisfactory proof in the following cases:

First. That such soldier, after such charge of desertion was made, and within a reasonable time thereafter, voluntarily returned to his command and served faithfully to the end of his term of service, or until discharged.

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Second. That such soldier absented himself from his command or from hospital while suffering from wounds, injuries, or disease, received or contracted in the line of duty, and upon recovery voluntarily returned to his command and served faithfully thereafter, or died from such wounds, injuries, or disease while so absent, and before the date of muster out of his command or expiration of his term of service, or was prevented from so returning by reason of such wounds, injuries, or diseases before such muster out or expiration of service.

Third. That such soldier was a minor, and was enlisted without the consent of his parent or guardian, and was released or discharged from such service by the order or decree of any State or United States court on habeas corpus or other judicial proceedings; and in such case such soldier shall not be entitled to any bounty or allowance or pay for any time such soldier was not in the performance of military duty. *Sec. 2, Act of Mar. 2, 1889 (25 Stat. 869), as amended by the Act of Mar. 2, 1891 (26 Stat. 824).*

445. *Same—Where soldier reenlisted.*—The charge of desertion now standing on the rolls and records in the office of the Adjutant-General of the Army [or the Record and Pension Office of the War Department] against any regular or volunteer soldier who served in the late war of the rebellion by reason of his having enlisted in any regiment, troop, or company, or in the United States Navy or Marine Corps, without having first received a discharge from the regiment, troop, or company in which he had previously served shall be removed in all cases wherein it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such reenlistment was not made for the purpose of securing bounty or other gratuity that he would not have been entitled to had he remained under his original term of enlistment; that the absence from the service did not exceed four months, and that such soldier served faithfully under his reenlistment. *Sec. 3, Act of Mar. 2, 1889 (25 Stat. 870); and Act of May 9, 1892 (27 id, 27).*

(See remark following paragraph 448, which is equally applicable to this paragraph.)

446. *Same—Where restored to duty.*—Whenever it shall appear from the official records in the office of the Adjutant-General, United States Army [or the Record and Pension Office of the War Department], that any regular or volunteer soldier of the late war was formally restored to duty from desertion by the commander competent to order his trial for the offense, or, having deserted and being charged with desertion, was, on return to the service, suffered, without such formal restoration, to resume his place in the ranks of his

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command, serving faithfully thereafter until the expiration of his term, such soldier shall not be deemed to rest under any disability because of such desertion in the prosecution of any claim for pension, on account of disease contracted or wounds or injuries received in the line of his duty as a soldier. *Sec. 4, Act of Mar. 2, 1889 (25 Stat. 870).*

(See remarks which follow paragraph 448.)

447. *Same—Heirs to receive pay and bounty.*—When the charge of desertion shall be removed under the provisions of this act from the record of any soldier, such soldier, or, in case of his death, the heirs or legal representatives of such soldier, shall receive the pay and bounty due to such soldier. *Sec. 5, id.*

448. *Same—Pay, etc., while absent without leave.*—This act shall not be so construed as to give to any such soldier, or, in case of his death, to the heirs or legal representatives of any such soldier, any pay, bounty, or allowance for any time during which such soldier was absent from his command without proper authority, nor shall it be so construed as to give any pay, bounty, or allowance to any soldier, his heirs or legal representatives, who served in the Army a period of less than six months.[1] *Sec. 5, id.*

449. *Same—Mexican War soldiers.*—The Secretary of War is hereby authorized and directed to amend the military record of any soldier who enlisted for the war with Mexico, upon proper application, where the rolls and records of the Adjutant-General's Office show the charge of desertion against him, when such rolls and records show the facts set out in the following cases:

First. That said soldier served faithfully the full term of his enlistment, or having served faithfully for six months or more, and until the fourth day of July anno Domini eighteen hundred and forty-eight, left his command without having received a discharge.

Second. That such soldier, after said charge of desertion was entered on the rolls, voluntarily returned to his command within a reasonable time, and served faithfully until discharge. *Sec. 6, id.*

450. *Same—Exceptions.*—The provisions of this act shall not be so construed as to relieve any soldier from the charge of desertion

[1] The persons from whose military record there may be a removal of the charge of desertion, under the act of March 2, 1889, chapter 390, are those against whom such a charge is "now standing." Deserters, therefore, whose cases had, at the date of the act, been judicially duly disposed of—by trial, conviction, and sentence by court-martial—are not within the purview of the statute. (Dig. Opin. J. A. G., p. 421, XVI, a.)

A pardon does not operate retroactively, and can not therefore "remove a charge" of desertion. It does not wipe out the fact that the party did desert, nor can it make the record say that he did not desert. It can not change facts of history. (Id., p. 418, XV, A.)

The restoration of a deserter to duty without trial does not operate as an acquittal, or relieve the charge of desertion. (Id., p. 423, XVI, E.)

For a general discussion of this subject see Digest J. A. G., pp. 420 et seq.

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who left his command from disaffection or disloyalty to the Government, or to evade the dangers and hardships of the service, or whilst in the presence of the enemy (not being sick or wounded), or while in arrest or under charges for beach of military duty, or in case of a soldier of the Mexican war who did not actually reach the seat of war. *Sec. 7, id.*

451. *Same—When soldier is to be restored to honorable status.*—When such charge of desertion is removed under the provisions of this act, the soldier shall be restored to a status of honorable service, his military record shall be corrected as the facts may require, and an honorable discharge shall be issued in those cases where the soldier has received none; and he shall be restored to all his rights as to pension, pay, or allowances as if the charge of desertion had never been made; and in case of the death of said soldier, his widow or other legal heir shall be entitled to the same rights as in case of other deceased honorably discharged soldiers. *Sec. 8, id.*

452. *Same—No pay while absent.*—This act shall not be construed to give to any soldier, or his legal representatives or heir, any pay or allowance for any period of time he was absent without leave and not in the performance of military duty. *Sec. 8, id.*

453. *Same—Limitation.*—All applications for relief under this act shall be made to and filed with the Secretary of War within the period of three years from and after July first, eighteen hundred and eighty-nine, and all applications not so made and filed within said term of three years shall be forever barred, and shall not be received or considered. *Sec. 9, id., 871.*

(The act of July 27, 1892 (27 Stat., 278), extended the operation of this section for a period of two years from July 1, 1892. See next paragraph.)

454. *Same—Time for applications extended.*—Section nine of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, approved March second, eighteen hundred and eighty-nine, is hereby so amended as to remove the limitation of time within which applications for relief may be received and acted upon under the provisions of said act. *Act of Mar. 2, 1895 (28 Stat. 814).*

(See remarks following paragraph 453.)

455. *Remuster of officers of volunteers.*—Any person who was duly appointed or commissioned to be an officer of the volunteer service during the war of the rebellion, and who was subject to the mustering regulations at the time applied to members of the volunteer service, shall be held and considered to have been mustered into the service of the United States in the grade named in his appointment or commission from the date from which he was to take rank under and by the terms of his said appointment or commission, whether

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the same was actually received by him or not, and shall be entitled to pay, emoluments, and pension as if actually mustered at that date: *Provided*, That at the date from which he was to take rank by the terms of his said appointment or commission there was a vacancy to which he could be so appointed or commissioned, and his command had either been recruited to the minimum number required by law and the regulations of the War Department, or had been assigned to duty in the field, and that he was actually performing the duties of the grade to which he was so appointed or commissioned; or if not so performing such duties, then he shall be held and considered to have been mustered into service and to be entitled to the benefits of such muster from such time after the date of rank given in his commission as he may have actually entered upon such duties: *Provided further*, That any person held as a prisoner of war, or who may have been absent by reason of wounds, or in hospital by reason of disability received in the service in the line of duty, at the date of issue of his appointment or commission, if a vacancy existed for him in the grade to which so appointed or commissioned, shall be entitled to all the benefits to which he would have been entitled under this act if he had been actually performing the duties of the grade to which he was appointed or commissioned at said date: *Provided further*, That this act shall be construed to apply only in those cases where the commission bears date prior to June twentieth, eighteen hundred and sixty-three, or after that date when the commands of the persons appointed or commissioned were not below the minimum number required by then existing laws and regulations: *And provided further*, That the pay and allowances actually received for the period covered by the recognition extended under this act shall be deducted from the sums otherwise to be paid thereunder. *Sec. 1, Act of Feb. 24, 1897 (29 Stat. 593)*.

456. *Same—Heirs, etc., entitled to arrears of pay, etc.*—The heirs or legal representatives of any person whose muster into service shall be recognized and established under the terms of this act shall be entitled to receive the arrears of pay and emoluments due, and the pension, if any, authorized by law, for the grade to which recognition shall be so extended. *Sec. 2, id.*

457. *Same—Pay received in good faith not to be refunded.*—The pay and allowances of any rank or grade paid to and received by any military or naval officer in good faith for services actually performed by such officer in such rank or grade during the war of the rebellion, other than as directed in the fourth proviso of the first section of this act, shall not be charged to or recovered back from such officer because of any defect in the title of such officer to the office, rank, or grade in which such services were so actually performed. *Sec. 3, id.*

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458. *Certificates of service in military telegraph corps.*—The Secretary of War is hereby authorized and directed to prepare a roll of all persons who served not less than ninety days in the operation of military telegraph lines during the late civil war, and to issue to each, upon application, unless it appears that his service was not creditably performed, or to the representatives of those who are dead, suitable certificates of honorable service in the military telegraph corps of the Army of the United States, stating the service rendered, the length of such service, and the dates, as near as may be, between which such service was performed: *Provided*, That this law shall not be construed to entitle the persons herein mentioned to any pay, pension, bounty, or rights not herein specifically provided for. *Act of Jan. 26, 1897 (29 Stat. 497).*

HISTORICAL NOTE.

The office of adjutant-general, which had existed during the Government under the Articles of Confederation, was created by section 7 of the act of March 5, 1792 (1 Stat. 241), which made provision for an adjutant who was to do the duty of an inspector; section 3 of the act of May 30, 1796 (id., 483), contained a similar provision for an inspector who was to do the duty of adjutant-general, but who was to continue in service until March 4, 1797, and no longer. Temporary provision seems to have been made for the performance of the duties of the department from March 4, 1797, until May, 1798, when, in anticipation of war with France, an increase of the military establishment was authorized and provision made in section 6 of the act of May 28, 1789 (id., 538), for the appointment of an adjutant-general with the rank and pay of a brigadier-general. Section 14 of the act of March 3, 1799 (id., 749), contained the requirement that the adjutant-general of the Army should be, ex officio, assistant inspector-general, and that deputy inspectors-general should be, ex officio, deputy adjutants-general, and should perform the duties of adjutants-general in the armies to which they might be assigned. These officers were disbanded on June 15, 1800, in pursuance of a requirement to that effect contained in the act of May 14, 1800 (2 id., 85). Section 3 of the act of March 16, 1802 (id., 132), provided for an adjutant and inspector of the Army, who was to be taken from the field officers. Section 4 of the act of January 11, 1812 (id., 671), created the office of adjutant-general, with the rank and pay of a brigadier-general, which continued to exist until the close of the war, when it was discontinued in the reduction accomplished by the act of March 3, 1815 (3 id., 224). The duties of the department were again performed by officers temporarily detailed for the purpose for a little more than a year, when, by the act of April 24, 1816 (3 id., 297), the temporary establishment was made permanent and the strength of the department was fixed at one adjutant and inspector-general (brigadier-general), one assistant adjutant-general (colonel) for each division, and one assistant adjutant-general (major) for each brigade. At the general reduction of 1821 the department was reduced to a single officer—an adjutant-general of the Army—with the rank of a colonel of cavalry. By section 7 of the act of July 5, 1838 (5 id., 256), two assistant adjutants-general (brevet majors) and four brevet captains were added to the department. By section 6 of the act of June 18, 1846 (9 id., 17), four assistant adjutants-general were added for the period of the existing war; by section 2 of the act of March 3, 1847 (id., 184), one lieutenant-colonel and two brevet captains were authorized under the same restriction as to tenure of office. By section 3 of the act of July 19, 1848 (id., 247), the limitation contained in the two acts last cited was removed, and the establishment, as it existed at the close of the war with Mexico, was made permanent; the vacancies were not to be filled, however, until the further order of Congress; but, by section 4 of the act of March 2, 1849 (id., 351), this restriction was repealed and the President was authorized to make appointments and promotions in the department as then constituted by law.

At the outbreak of the war of the rebellion the department was reorganized, its composition being fixed by the act of August 3, 1861 (12 Stat. 287), at 1

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brigadier-general, 1 colonel, 2 lieutenant-colonels, 4 majors, and 12 captains. By section 22 of the act of July 17, 1862 (id., 597), 1 colonel, 2 lieutenant-colonels, and 9 majors were added to the establishment, with the requirement that vacancies in the grade of major should thereafter be filled by selections from captains in the Army. By section 10 of the act of July 28, 1866 (14 id., 333), the composition of the department was fixed as follows: One brigadier-general, 2 colonels, 4 lieutenant-colonels, and 13 majors. The grade of captain not being provided for in this enactment was thenceforward discontinued. This statute contained the requirement that vacancies in the office of adjutant-general should thereafter be filled by selection from the officers of the department. By section 2 of the act of March 3, 1869 (15 id., 318), promotions and appointments in the department were forbidden until the further order of Congress, but by joint resolution No. 12, of April 10, 1869 (16 id., 53), this statute was suspended in its operation as to vacancies which had existed on March 3, 1869. By the act of March 3, 1873 (17 id., 578), the appointment of 1 major to the department was authorized, and, by the act of March 3, 1875 (18 id., 478), the restriction upon appointments and promotions imposed by the act of March 3, 1869, was removed, and the composition of the department fixed at 1 brigadier-general, 2 colonels, 4 lieutenant-colonels, and 10 majors. By the act of February 28, 1887 (24 id., 434), the grades of rank of the officers constituting the department were rearranged so as to consist of 1 brigadier-general, 4 colonels, 6 lieutenant-colonels, and 6 majors, the vacancies created by the act to be filled by promotion according to seniority. By the act of August 6, 1894 (28 id., 234), the number of majors in the department was reduced to 4. By the act of May 18, 1898 (30 id., 419), the appointment of 1 colonel and 1 major was authorized, with the proviso that, upon the muster out of the volunteer forces, no promotions or appointments should be made until the number of officers of the above grades had been reduced to that authorized by the law in force prior to the passage of the act. By section 3 of the act of June 6, 1900 (31 id., 655), the rank of major-general was conferred upon the adjutant-general "during the service of the present incumbent." By section 13 of the act of February 2, 1901 (31 id., 751), the permanent strength of the department was fixed at 1 adjutant-general with the rank of major-general, until a vacancy shall occur in the office on the expiration of the service of the present incumbent, by retirement or otherwise, and thereafter with the rank of brigadier-general, 5 assistant adjutants-general with the rank of colonel, 7 assistant adjutants-general with the rank of lieutenant-colonel, and 15 assistant adjutants-general with the rank of major. A system of details was also established, by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Adjutant-General's Department.

By the act of April 23, 1904, the offices of the Adjutant-General's Department, except the adjutant-general, and the officers of the Record and Pension Office, were constituted a department of the Army to be known as the Military Secretary's Department; the Adjutant General's Office and the Record and Pension Office constituting a bureau of the War Department to be known as the Military Secretary's Office.

By the act of March 2, 1907, the name of the Military Secretary's Department was changed to Adjutant-General's Department and the Military Secretary's Office became the Adjutant-General's Office.

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CHAPTER XVI.

THE INSPECTOR-GENERAL'S DEPARTMENT.

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459. *Composition.*—That the Inspector-General's Department shall consist of one Inspector-General with the rank of brigadier-general, four inspectors-general with the rank of colonel, four inspectors-general with the rank of lieutenant-colonel, and eight inspectors-general with the rank of major: *Provided*, That all vacancies created or caused by this section shall be filled, as far as possible, by promotion according to seniority of officers of the Inspector-General's Department. *Sec. 14, Act of Feb. 2, 1901 (31 Stat. 751).*

Upon the occurrence of a vacancy in the grade of colonel in the Inspector-General's Department after the present lieutenant-colonels therein shall have been promoted or retired, such vacancy shall not be filled, and thereafter the number of officers authorized for that department shall be as follows: One inspector-general with the rank of brigadier-general; three inspectors-general with the rank of colonel; four inspectors-general with the rank of lieutenant-colonel, and nine inspectors-general with the rank of major. *Act of Mar. 2, 1901 (31 Stat. 899).*

(The reduction provided for in the act of March 2, 1901, has been accomplished. For the statutory regulations in regard to details and promotions in the Inspector General's Department, see chapter entitled Staff Departments.)

460. *Expert accountant.*—For pay of one expert accountant for the Inspector-General's Department, to be appointed in case of vacancy, by the Secretary of War, two thousand five hundred dollars. *Act of Feb. 24, 1891 (26 Stat. 773).*

(This item, contained in an appropriation act, served to authorize the employment of an expert accountant; the authority has been continued in a similar manner. For the law covering the mileage of the expert accountant see chapter entitled Quartermaster Corps under the head "Payments to the Army").

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461. *Duties of Inspectors General.*—It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money; also to ascertain whether the disbursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the Inspection Department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement. *Act of Apr. 20, 1874 (18 Stat. 33).*

(For the general duties of the Inspector General's Department see A. R., 1913, paragraphs 878–902.)

462. *Reports of inspections.*—That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War. *Sec. 2, Id.*

(See paragraphs 412 and 413.)

463. *Inspections of Volunteer Soldiers' Homes.*—The Secretary of War shall hereafter exercise the same supervision over all receipts and disbursements on account of the Volunteer Soldiers' Homes as he is required by law to apply to the accounts of disbursing officers of the Army. *Act of Mar. 3, 1893 (27 Stat. 653).*

(See paragraph 412.)

463½. *Same—Annual inspection by officer of Inspector General's Department.*—Hereafter, one in each fiscal year, the Secretary of War shall cause a thorough inspection to be made of the National Home for Disabled Volunteer Soldiers, its records, disbursements, management, discipline, and condition, such inspection to be made by an officer of the Inspector General's Department, who shall report thereon in writing, and said report shall be transmitted to Congress at the first session thereafter. *Act of Aug. 18, 1894 (28 Stat. 412).*

464. *Inspector-General of Army to inspect Soldiers' Home.*—The Inspector-General of the Army shall, in person, once in each year thoroughly inspect the [Soldiers'] Home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make. *Sec. 2, Act of Mar. 3, 1883 (22 Stat. 564).*

(For the law in regard to the inspection of the Military Prison see paragraph 479 post.)

HISTORICAL NOTE.

The Inspector General's Department had existed during the War of the Revolution, the office of inspector general having been held by Baron Steuben, whose appointment was approved by Congress in a resolution dated May 25, 1778. During the incumbency of Baron Steuben a system of drill regulations was prepared and introduced, which continued in use until replaced, in part, by the

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system prepared by Col. Alexander Smyth in 1810, being finally superseded by the drill regulations prepared by Major General Scott in 1821. On June 25, 1788, in conformity to a resolution of Congress of that date, the Inspector's Department ceased to exist, and the inspection of the troops was conducted for a time by officers of the line detailed for the purpose. By section 4 of the act of April 30, 1790 (1 Stat. 119), the appointment of one inspector was authorized for the establishment created by that enactment. The act of March 5, 1792 (id., 241), merged the duties of the Adjutant and Inspector General's Departments and made provision for an adjutant who was to do the duty of an inspector; section 3 of the act of May 30, 1796 (id., 483), made similar provision for an inspector who was to do the duty of an adjutant. The acts of March 3, 1797 (id., 507), and May 22, 1798 (id., 557), authorized the detail of an officer of the line to perform the duties of inspector general. Section 6 of the act of May 28, 1798 (id., 588), passed in contemplation of war with France, authorized the appointment of an inspector general with the rank of major general, and on July 18, 1798, Gen. Alexander Hamilton was appointed to the vacancy. The temporary military establishment thus authorized, which was never fully completed, was disbanded by the acts of February 20, 1800 (2 id., 7), and May 14, 1800 (id., 85), and the duties of the department were again performed by detail until the office of inspector was created by section 4 of the act of March 16, 1802 (id., 132); by section 3 of the act of April 12, 1808 (id., 481), two brigade inspectors were authorized to be detailed from the line with increased rank; by the act of December 24, 1811 (id., 669), the office of inspector general (brigadier general) was created and two assistants (lieutenant colonels) were authorized; the duties of the department were defined in regulations approved by the Secretary of War on November 4, 1812. By the act of March 3, 1813 (id., 819), the Adjutant and Inspector General's Departments were again merged. The act of March 3, 1815 (3 id., 224), fixing the peace establishment, made no express provision for these departments, their duties being performed by officers temporarily detailed for the purpose. By section 10 of the act of April 24, 1816 (id., 297), however, the temporary establishment which had existed since 1815 was made permanent. Provision was also made for an Adjutant and Inspector General of the Army, together with an inspector general to each division and an assistant to each brigade, which were to be filled by detail of officers from the line. At the general reduction of 1821 the Inspector General's Department was recognized and continued by section 6 of the act of March 2, 1821 (id., 615), its composition being fixed at two inspectors general with the rank and pay of colonels of cavalry. By section 4 of the act of August 23, 1842 (5 id., 512), the department was reduced to one officer; the disbanded officer was restored, however, by the act of June 12, 1846 (9 id., 2), and the composition of the department, as thus established, underwent no change until the outbreak of the War of the Rebellion.

By section 2 of the act of August 3, 1861 (12 id., 287), five majors were added to the department; by section 4 of the act of August 6, 1861 (id., 318), two colonels were authorized; and provision for the inspection service of the armies in the field was made by section 10 of the act of July 17, 1862 (id., 299), which authorized the rank and pay of lieutenant colonel of cavalry to be conferred upon the inspectors general of Army corps. By section 11 of the act of July 28, 1866 (14 id., 334), the composition of the department was fixed as follows: Four colonels, three lieutenant colonels, and two majors. Section 6 of the act of March 3, 1869 (15 id., 318), contained the requirement that there should be no promotions or appointments in the staff until otherwise directed by law; by the acts of June 8, 1872 (17 id., 338), and June 16, 1874 (18 id., 77), promotions were authorized to correct inequalities in the rank of officers of the department. By the act of June 23, 1874 (id., 244), the restriction contained in the act of March 3, 1869, was removed and the strength of the department fixed at one inspector general with the rank of colonel, two inspectors general with the rank of lieutenant colonel, and two inspectors general with the rank of major; authority was also conferred for the detail of four officers from the line of the Army for service as assistant inspectors general, who were to receive the mounted pay of their grades, and no appointments were to be made to the grade of major until the number of officers in the department had been reduced to five. By the act of December 12, 1878 (20 id., 257), the rank of brigadier general was conferred upon the senior inspector general. By the act of February 5, 1885 (23 id., 297), the composition of the department was fixed as follows: One inspector general (brigadier general), two colonels, two lieutenant colonels, and two majors. It was also provided that the inspector general should be

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selected from the officers of the corps, that promotions should be by seniority in the department, and that appointments to the grade of major should be made from the captains in the line of the Army. By the act of July 7, 1898 (30 id., 720), one colonel, one lieutenant colonel, and one major were added to the department under the conditions above set forth.

By section 14 of the act of February 2, 1901 (31 id., 751), the permanent strength of the department was fixed at one inspector general with the rank of brigadier general, four inspectors general with the rank of colonel, four inspectors general with the rank of lieutenant colonel, and eight inspectors general with the rank of major. A system of details was also established, by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Inspector General's Department.

The act of March 3, 1901 (31 Stat. 899), modified the organization prescribed in the act of February 2, 1901, by the insertion of the requirement that, upon the occurrence of a vacancy in the grade of colonel, after the present lieutenant colonels shall have been promoted or retired, the vacancy shall not be filled and thereafter the number of officers authorized for the department shall be as follows: One inspector general with the rank of brigadier general, three inspectors general with the rank of colonel, four inspectors general with the rank of lieutenant colonel, and nine inspectors general with the rank of major.

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CHAPTER XVII.

THE JUDGE ADVOCATE GENERAL'S DEPARTMENT—MILITARY PRISON.

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465. *Organization.*—The Judge-Advocate-General's Department[1] shall consist of one Judge-Advocate-General with the rank of brigadier-general, two judge-advocates with the rank of colonel, three judge-advocates with the rank of lieutenant-colonel, six judge-advocates with the rank of major, and for each geographical department or tactical division of troops not provided with a judge-advocate from the list of officers holding permanent commissions in the Judge-Advocate-General's Department, one acting judge-advocate

[1] Sections 1198 and 1200 of the Revised Statutes and section 2 of the act of June 23, 1874 (18 Stat. 244), were replaced by the act of July 5, 1884 (23 Stat. 113), which merged the Bureau of Military Justice and the corps of judge-advocates in the Judge-Advocate-General's Department, created by that statute.

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with the rank, pay, and allowances of captain mounted.[1] *Sec. 15, Act of Feb. 2, 1901 (31 Stat. 751).*

466. *Number of majors increased.*—Hereafter the number of majors in said department shall be seven: *Provided*, That this shall not be so construed as to increase the total number of officers now in the Regular Army. *Act of Mar. 2, 1913 (37 Stat. 708).*

467. *Promotions, appointments, details.*—Promotions in the Judge-Advocate-General's Department, as provided in the first section of this act, shall be by seniority up to and including the rank of colonel. *Sec. 2, Act of July 5, 1884 (23 Stat. 113).*

468. *Vacancies.*—Vacancies created or caused by this Act in the grade of major may be filled by appointment of officers holding commissions as judge-advocate of volunteers since April twenty-first, eighteen hundred and ninety-eight. Vacancies which may occur thereafter in the grade of major in the Judge-Advocate-General's Department shall be filled by the appointment of officers of the line, or of persons who have satisfactorily served as judge-advocates of volunteers since April twenty-first, eighteen hundred and ninety-eight, or of persons from civil life who at date of appointment are not over thirty-five years of age and who shall pass a satisfactory examination to be prescribed by the Secretary of War. *Sec. 15, Act of Feb. 2, 1901 (31 Stat. 751).*

469. *Acting judge-advocates.*—Acting judge-advocates provided for herein shall be detailed from officers of the grades of captain or first lieutenant of the line of the Army, who, while so serving, shall continue to hold their commissions in the arm of service to which they permanently belong. Upon completion of a tour of duty, not exceeding four years, they shall be returned to the arm in which commissioned, and shall not be again detailed until they shall have completed two years duty with the arm of service in which commissioned. *Id.*

470. *Duties of judge-advocates.*—Judge-advocates shall perform their duties under the direction of the Judge-Advocate-General. *Sec. 1201, R. S.*

(For the executive regulations determining the duties of the Judge-Advocate-General's Department, see Army Regulations, paragraphs 915 to 921, inclusive, 1913. General Order 56, War Department, 1913, places the direction and control of the United States Military Prison, as well as of the prison maintained at Castle Williams, Fort Jay, N. Y., under the Judge-Advocate-General of the Army.)

471. *The Judge-Advocate-General to record Court-Martial proceedings.*—The Judge-Advocate-General shall receive, revise and cause to be recorded the proceedings of all courts-martial, courts of

[1] This section repeals and replaces section 1 of the act of July 5, 1884 (23 Stat. 113), in pari materia.

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inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge-Advocate-General of the Army.[1] *Sec. 1199, R. S.*

472. *Professor of law at the Military Academy.*—The Secretary of War may assign one of the judge-advocates of the Army to be professor of law. *Act of June 6, 1874 (18 Stat. 60).*

(The Secretary of War may assign any officer of the Army as professor of law. See paragraph 1116.)

473. *Judge-Advocates of Departments, etc., may administer oaths.*—Judge-advocates of departments and of courts-martial and the trial officers of summary courts are hereby authorized to administer oaths for the purposes of military justice and for other purposes of military administration. *Sec. 4, Act of July 27, 1892 (27 Stat. 278).*

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[1] The work done in his office and for which this officer is responsible consists mainly of the following particulars: Reviewing and making reports upon the proceedings of trials by court-martial of officers, enlisted men and cadets, and the proceedings of courts of inquiry; making reports upon applications for pardon or mitigation of sentences; preparing and revising charges and specifications prior to trial, and instructing judge-advocates in regard to the conduct of prosecutions; drafting of contracts, bonds, etc.; as also, for execution by the Secretary of War, of deeds, leases, licenses, grants of rights of way, approval of locations of rights of way, approval of plans of bridges, power dams, and other structures, notices to alter bridges as obstructions to navigation, removal of sunken wrecks, etc.; framing of bills affecting legislation for the Army, Militia, etc., forms of procedure, etc.; preparing of opinions upon questions relating to the appointment, promotion, rank, pay, allowances, etc., of officers, enlisted men, etc., and to their amenability to military jurisdiction and discipline; upon the civil rights, liabilities, and relations of military persons and the exercise of the civil jurisdiction over them; as to cases of death under Act of May 11, 1908 (35 Stat. 108), as amended by the Act of March 3, 1909 (35 Stat. 735); upon the employment of the Army in the execution of the laws; upon the discharge of minors, deserters, etc., on habeas corpus; upon the administration of military commands, the care and government of military reservations, militia target ranges, etc., and the extent of the United States and State jurisdiction over such reservations or other lands of the United States; upon the proper construction of appropriation acts and other statutes; upon the interpretations and effect of public contracts between the United States and individuals and corporations; upon the validity and disposition of the varied claims against the United States presented to the War Department, including injuries received by employees on public works under Act of May 30, 1908 (35 Stat. 556); upon the execution of public works under appropriation by Congress; upon obstructions to navigation as caused by bridges, dams, locks, piers, harbor lines, etc., upon the riparian rights of the United States and of States and individuals on navigable waters, etc.; and the furnishing to other departments of the Government of statements and information apposite to claims therein pending; as to the application of the eight-hour law (Act of Aug. 1, 1892, 27 Stat. 340), as amended by the Act of March 3, 1913 (37 Stat. 726), to the various classes of work, under the several bureaus of the War Department, including river and harbor improvements; rewards for the apprehension and delivery of deserters; and to furnishing to individuals under the 114 Article of War copies of their records of trial by general courts-martial. The matter of the submitting to the Judge-Advocate-General of applications for opinions is regulated by paragraph 915, Army Regulations, 1913.

By General Order 56, War Department, 1913, the Judge-Advocate-General of the Army is given charge, under the Secretary of War, of the direction and control of the United States Military Prison and of the prison maintained at Castle Williams, Fort Jay, N. Y.

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MILITARY PRISON.

474. *Military prison—Establishment of, at Rock Island, Ill.*—There shall be established at Rock Island, in the State of Illinois, a prison for the confinement and reformation of offenders against the rules and regulations, and laws for the government of the Army of the United States, in which shall be securely confined, and employed at labor, and governed in the manner hereinafter directed, all offenders convicted before any court-martial or military commission in the United States, and sentenced according to law to imprisonment therein. *Sec. 1344, R. S.*

475. *Establishment of at Fort Leavenworth, Kans.*—That said act be, and the same is hereby, so amended that all acts and things therein required to be done and performed at Rock Island, in the State of Illinois, shall be done and performed on the military reservation at Fort Leavenworth in the State of Kansas: *Provided*, That the Government buildings now on said military reservation at Fort Leavenworth shall be modified and used so far as practicable for the purposes of said prison. *Act of May 21, 1874 (18 Stat. 48).*

476. *Branch prisons.*—Hereafter any military prison that the Secretary of War may designate for the confinement of general prisoners for whom there is no room at the United States Military Prison at Fort Leavenworth, Kansas, or whom it is impracticable to send there, shall be regarded as a branch of the said United States Military Prison and equally with it shall be subject to the laws relating thereto, including chapter six, title fourteen, of the Revised Statutes. *Act of Mar. 2, 1907 (34 Stat. 1169).*

477. *Government and control of prison.*—Hereafter the government and control of the United States Military Prison shall, under the Secretary of War, be vested in the Board of Commissioners of the United States Soldiers' Home, which board shall consist as at present of the Surgeon-General, the Commissary-General, the Adjutant-General, the Quartermaster-General, the Chief of Engineers, the Judge-Advocate-General, and the Governor of the Home, and the president of said board, who shall be the senior in rank of the members thereof, shall submit annually to the Secretary of War, for transmission to Congress, a full statement of the financial and other affairs of both the home and the prison for the preceding fiscal year. *Act of March 4, 1909 (35 Stat. 1004).*

(This statute transfers the control of the United States Military Prison from the board of government established by General Orders 205, War Department, 1905, to the Board of Commissioners of the United States Soldiers' Home, and changes the personnel of the latter by making the Chief of Engineers a permanent member of the board. Under the provisions of General Orders 56, War Department, September 17, 1913, the Judge-Advocate-General of the Army, under the Secretary of War, is charged with the direction and control of the prison.)

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478. *Visitation of prison.*—The Secretary of War shall, with said commissioners, annually, and as much oftener as may be deemed expedient, visit said prison for the purposes of examination, inspection, and correction; and they shall inquire into all abuses or neglects of duty on the part of the officers or other persons in charge of the same, and make such changes in the general discipline of the prison as they may hold to be essential. *Sec. 1346, R. S., as amended by Act of Jan. 19, 1891 (26 Stat. 722).*

479. *Examination of accounts, etc.*—One of the inspectors general of the Army shall, at least once in each year, visit the prison for the purpose of examining into the books and all the affairs thereof, and ascertaining whether the laws, rules, and regulations relating thereto are complied with, the officers are competent and faithful, and the convicts properly governed and employed, and at the same time treated with humanity and kindness. And it shall be the duty of the inspector, at once, to make full report thereof to the Secretary of War. *Sec. 1348, R. S., as amended by the Act of Jan. 19, 1891 (26 Stat. 722).*

480. *Officers and attendants.*—The officers of the prison shall consist of a commandant and such subordinate officers as may be necessary, a chaplain, a surgeon, and a clerk, who shall be detailed by the Secretary of War from the commissioned officers of the Army; and a sufficient number of enlisted men shall be detailed by the Secretary of War to act as turnkeys, guards, and assistants in prison. *Sec. 1347, R. S.*

481. *Powers and duties of commandant.*—The commandant shall have command of the prison; shall have the charge and employment of the prisoners, and the custody of all the property of the Government connected with the prison. He shall receive and pay out all the money used for the prison, and shall cause to be kept, in suitable books, complete accounts of all the property, expenses, income, business, and concerns of the prison; and shall make full and regular reports thereof to the Secretary of War. *Sec. 1350, R. S.*

482. *Bond of commandant.*—Before the commandant enters upon the duties of his office he shall give bond, with sufficient sureties, in a sum to be fixed by the Secretary of War, to be approved by him, conditioned that he shall faithfully account for all money placed in his hands for the use of the prison and for the faithful discharge of all his duties as commandant. *Sec. 1349, R. S.*

483. *Officers, etc., not to be interested in contracts.*—No officer of the prison, or other person connected therewith, shall be concerned or interested, directly or indirectly, in any contract, purchase, or sale made on account of the prison. *Sec. 1358, R. S.*

484. *Officers suffering prisoner to escape.*—Any officer who shall suffer a convict to escape, or shall in any way consent to his escape,

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or shall aid him to escape, or in an attempt to escape, shall be dismissed from the service, and suffer such other punishment as a court-martial may inflict. *Sec. 1359, R. S.*

485. *Soldiers suffering prisoner to escape.*—Any soldier or other person employed in the prison who shall suffer a convict to escape, or shall in any way consent to his escape, or shall aid him to escape, or in an attempt to escape, shall, upon conviction by a court-martial, be confined therein not less than one year. *Sec. 1360, R. S.*

486. *Employment of convicts, proceeds of work.*—The commandant shall, under the direction and with the approval of the Secretary of War, employ, for the benefit of the United States, the convicts at such labor and in such trades as may be deemed best for their health and reformation. He shall have power to sell and dispose of any articles manufactured by the convicts, and shall regularly account for the proceeds thereof, and shall give bond and security for the faithful keeping and accounting of all moneys and property coming to his hands as such commandant. *Sec. 1351, R. S.*

487. *Manufacture of military supplies.*—The Secretary of War shall cause to be fabricated at the said prison such supplies for the Army as can be economically and properly manufactured at the said prison. *Act of Mar. 3, 1879 (20 Stat. 389).*

488. *Conduct of prisoners, remissions.*—The commandant shall take note and make record of the good conduct of the convicts, and shall shorten the daily time of hard labor for those who, by their obedience, honesty, industry, or general good conduct, earn such favors; and the Secretary of War is authorized and directed to remit, in part, the sentences of such convicts, and to give them an honorable restoration to duty in case the same is merited. *Sec. 1352, R. S.*

(See in relation to the reenlistment of certain men, paragraph 1052.)

489. *Privileges of prisoners.*—The use of newspapers and books shall not be denied the convicts at times when not employed; and unofficial visitors shall be admitted to the prison under such restrictions as the board of commissioners may impose. The prisoners shall not be denied the privilege of communicating with their friends by letter, and from receiving like communications from them, all of which shall be subject to the inspection of the commandant, or such officer as he may assign to that duty. *Sec. 1356, R. S.*

490. *Provisions for prisoners.*—The prisoners shall be supplied with ample and clean bedding, and with wholesome and sufficient food, but when in hospital or under discipline their diet shall be prescribed by the proper authority. The prison shall be suitably ventilated, and each prisoner shall have a weekly bath of cold or tepid water, which shall be applied to the whole surface of the body, unless

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the surgeon shall direct otherwise for the health of the prisoner. *Sec. 1357, R. S.*

491. *Misconduct of prisoners.*—In case any convict shall disobey the lawful orders of the officers of the prison, or refuse to comply with the rules and regulations thereof, he may be placed in solitary confinement, and the commandant shall at once report the case to the Secretary of War, who shall direct the inspector to make full examination and report of the matter at the next inspection. *Sec. 1353, R. S.*

492. *Forbidden, punishment.*—In no case shall any prisoner be subjected to whipping, branding, or the carrying of weights for the purpose of discipline, or for producing penitence. *Sec. 1354, R. S.*

493. *Prisoners subject to articles of war.*—All prisoners under confinement in said military prisons undergoing sentence of courts-martial shall be liable to trial and punishment by courts-martial under the rules and articles of war for offenses committed during the said confinement. *Sec. 1361, R. S.*

494. *Clothing at discharge.*—Every prisoner, upon being discharged from prison, shall be furnished with decent clothing. *Sec. 1355, R. S.*

(For a number of years the appropriations act for the Army has contained annually an item authorizing a donation of $5 to each dishonorably discharged prisoner upon his release from confinment under court-martial sentence involving dishonorable discharge, and one authorizing the issue to a man under similar conditions a suit of citizen's outer clothing, to cost not exceeding $10; also one authorizing transportation on discharge of prisoners confined at the United States Military Prison to their homes or elsewhere as they may elect, provided the cost is not greater than that to the place of last enlistment.)

HISTORICAL NOTE.

The office of Judge Advocate of the Army was created during the War of the Revolution, having been established by resolution of Congress of July 25, 1775 (Journals of Cong.), soon after the enactment of the Articles of War on June 29 of the same year. In the reenactment of the articles, in 1776, this officer was styled the Judge Advocate General of the Army and was empowered to prosecute in the name of the United States or to conduct such prosecutions by deputy. The office of judge advocate ceased to exist at the disbandment of the Revolutionary Armies, but was revived by section 2 of the act of March 3, 1797 (1 Stat., 507), which made provision for a judge advocate, to be taken from the commissioned officers of the line, who was to receive the same pay and allowances as the brigade major (adjutant) and inspector therein authorized. This office, with other offices in the General Staff, was discontinued by the act of March 16, 1802 (2 id., 132). Section 19 of the act of 1812 (id., 674), passed in contemplation of war with England, made provision for one judge advocate, with the rank of major, to each division, and this number was increased to three by section 2 of the act of April 24, 1816 (3 id., 397). At the reduction of 1818 these officers were disbanded (act of April 14, 1818, 3 id., 426), and the office of Judge Advocate of the Army was discontinued by the act of March 2, 1821 (id., 615).

By section 4 of the act of March 3, 1849 (9 id., 351), the office of Judge Advocate of the Army was reestablished, with the rank and pay of major of Cavalry. By section 5 of the act of July 17, 1862 (12 id., 598), the office of Judge Advocate General was created, with the rank and pay of brigadier general; by this enactment the duties of the office were defined. By section 5 of the same statute provision was made for a Corps of Judge Advocates, one of whom was to be

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assigned to duty at the headquarters of each army in the field. By section 5 of the act of June 20, 1864 (13 id., 145), the Bureau of Military Justice was established, to which the Judge Advocate General was transferred, and an Assistant Judge Advocate General, with the rank of colonel of Cavalry, was authorized. By section 12 of the act of July 28, 1866 (14 id., 334), the composition of the department was fixed at one Judge Advocate General (brigadier general), one Assistant Judge Advocate General (colonel), and ten judge advocates were added to the military establishment, who were to be selected by the Secretary of War from the Corps of Judge Advocates authorized by the act of July 17, 1862. By this statute the office of Solicitor of the War Department was discontinued, the duties of the office being marged in the Bureau of Military Justice. By section 3 of the act of March 3, 1869 (15 Stat., 318), all appointments and promotions in the several departments of the staff were prohibited until otherwise directed by law; but this restriction was removed, as to the Bureau of Military Justice, by the act of April 10, 1869 (16 id., 44), which fixed the number of judge advocates at eight. By section 2 of the act of June 23, 1874 (18 id., 244), the office of Assistant Judge Advocate General was discontinued, and it was provided that there should be no appointments to the grade of major until the number of officers of that grade had been reduced to four. By the act of July 5, 1884 (23 id., 113), the Bureau of Military Justice and the Corps of Judge Advocates were consolidated and merged in the Judge Advocate General's Department, the composition of which was fixed as follows: One Judge Advocate General (brigadier general), one Assistant Judge Advocate General (colonel), three deputy judge advocates general (lieutenant colonels), and three judge advocates (majors). Promotion to the grade of colonel was to be by seniority, and provision was made for the detail of officers of the line as judge advocates of military departments, who were to have, while so serving, the rank and pay of captains mounted.

By section 15 of the act of February 2, 1901 (31 id., 751), the permanent strength of the department was fixed at one Judge Advocate General with the rank of brigadier general, two judge advocates with the rank of colonel, three judge advocates with the rank of lieutenant colonel, and six judge advocates with the rank of major. The system of details of officers of the grade of captain or first lieutenant to serve as acting judge advocates and, while so serving, to have the rank, pay, and allowances of captains mounted, as established by the act of July 5, 1884 (23 Stat., 113), was recognized and continued.

By the act of March 2, 1913 (37 id., 708), the number of majors was increased to seven.

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CHAPTER XVIII.

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495. *Organization.*—The office establishments of the Quartermaster General, the Commissary General, and the Paymaster General of the Army are hereby consolidated and shall hereafter constitute a single bureau of the War Department, which shall be known as the Quartermaster Corps,[1] and of which the Chief of the Quartermaster Corps created by this act shall be the head. The Quartermaster's, Subsistence, and Pay Departments of the Army are hereby consolidated into and shall hereafter be known as the Quartermaster Corps of the Army. The officers of said departments shall hereafter be known as officers of said corps and by the titles of the rank held by them therein, and, except as hereinafter specifically provided to the contrary, the provisions of sections twenty-six and twenty-seven of the act of Congress approved February second, nineteen hundred and one, entitled "An act to increase the efficiency of the permanent military establishment of the United States," are hereby extended so as to apply to the Quartermaster Corps in the manner and to the extent to which they now apply to the Quartermaster's, Subsistence, and Pay Departments, and the provision of said sections of said act relative to chiefs of staff corps and departments shall, so far as they are applicable, apply to all offices and officers of the Quartermaster Corps with rank above that of colonel. The officers now holding commissions as officers of the said departments shall hereafter have the same tenure of commission in the Quartermaster Corps, and as officers of said corps shall have rank of the same grades and dates as that now held by them, and, for the purpose of filling vacancies among them, shall constitute one list, on which they shall be arranged according to rank. So long as any officers shall remain on said list any vacancy occurring therein shall be filled, if possible, from among such officers, by selection if the vacancy occurs in a grade above that of colonel, and, if the vacancy occurs in a grade not above that of colonel, by the promotion of an officer who would have been entitled to promotion to that particular vacancy if the consolidation of departments hereby prescribed had never occurred: *Provided*, That on and after the first day of January, nineteen hundred and seventeen, any vacancies occurring among officers of the Quartermaster Corps with rank above that of colonel may, in the discretion of the President, be filled by selection from among officers who shall have served by detail in said corps for not less than four years. *Sec. 3 Act of Aug. 24, 1912 (37 Stat. 591).*

[1] The Quartermaster Corps provided for by section 3 of the Army appropriation act of August 24, 1912 (37 Stat. 591), came into legal existence on the date of the approval of the act to the extent that no detail to the grade of captain can be made thereto until the number of officers of that grade in said corps has been reduced below the authorized consolidated strength of 102. (Bulletin No. 20, Dig. Opin. J. A. G., Oct. 19, 1912.)

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496. *Same—six officers to be promoted to grade of major.*—That not to exceed six officers holding commissions with the rank of captain [1] in the Quartermaster Corps and who have lost in relative rank through irregularities of promotion and the operation of separate promotion within the three departments hereby consolidated, may, in the discretion of the President and subject to examination for promotion as prescribed by law, be advanced to the grade of major in the Quartermaster Corps, and any officer who shall be advanced to said grade under the terms of this proviso shall be temporarily an additional officer of said grade but only until a vacancy shall occur for him on the list of officers of said grade as hereafter limited; and no officer shall be detailed to fill any vacancy on the list of majors of the Quartermaster Corps until after all additional officers authorized by the proviso shall have been absorbed. The noncommissioned officers now known as post quartermaster sergeants and post commissary sergeants shall hereafter be known as quartermaster sergeants; the Army paymaster's clerks shall be known as pay clerks, and each of said noncommissioned officers and pay clerks shall continue to have the pay, allowances, rights, and privileges now allowed him by law. *Sec. 3, id.*

497. *Same—Restrictions as to details to fill vacancies.*—That no details [2] to fill vacancies in the grade of colonel in the Quartermaster

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[1] *Held*, that such provisions of said section 3 as became operative without executive action went into effect immediately upon the passage of the act and therefore that the new designation given to officers by the act should be used in referring to the officers of the consolidated corps, and that the details to the consolidated corps or to any of the bureaus composing it could not be made or become effective until the number of officers in the consolidated corps had been reduced to the number authorized by the law.

Held further, that the expression in the portion of the act above quoted requiring the Chief of the Quartermaster Corps to put the provisions of such section into effect "not less than sixty days after the passage" of said act, defines a period of limitation before which the provisions of the act requiring executive action can not be carried into effect, and that therefore the advancement of not to exceed six captains holding commission in the Quartermaster Corps to the grade of major as authorized by the act, not taking effect by operation of the law, but requiring executive action, must be postponed to the end of the sixty-day period. (Bulletin No. 20, Dig. Opins. J. A. G., Oct. 19, 1912.)

[2] *Held*, that the provisions of said section regarding details to the Quartermaster Corps became effective immediately upon the passage of the act, and that thereafter no details to the consolidated corps or to its constituent parts could be made to fill vacancies occurring therein, until the prescribed reduction in the number of officers therein had been accomplished. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

Held, that there being no captain on the permanent list of officers of the former Pay Department, the senior captain permanently belonging to the Quartermaster Corps may at the proper time be promoted to fill the vacancy in question, but that his right to promotion can not be held to antedate the time at which section 3 of the act of August 24, 1912, *supra*, which made the position available for him, becomes administratively effective.

Held further, that the advancement of the six captains for which special provision is made in section 3 of the act of August 24, 1912, must be deferred until the date when the said section is put into administrative effect, and that the rank of said officers as majors in the Quartermaster Corps can not antedate the latter date. Id.

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Corps shall be made until the number of officers of that grade shall have been reduced by three, and thereafter the number of officers in that grade shall not exceed twelve; and no details to fill vacancies in the grade of lieutenant-colonel in the Quartermaster Corps shall be made until the number of officers of that grade shall have been reduced by three, and thereafter the number of officers of that grade shall not exceed eighteen; and no details to fill vacancies in the grade of major in the Quartermaster Corps shall be made until the number of officers of that grade shall have been reduced by nine, and thereafter the number of officers in said grade shall not exceed forty-eight; and no details to fill vacancies in the grade of captain in the Quartermaster Corps shall be made until after the number of officers of that grade shall be reduced by twenty-nine, and thereafter the number of officers of said grade shall not exceed one hundred and two; and whenever the separation of a line officer of any grade and arm from the Quartermaster Corps shall create therein a vacancy that, under the terms of this proviso, can not be filled by detail such separation shall operate to make a permanent reduction of one in the total number of officers of said grade and arm in the line of the Army as soon as such reduction can be made without depriving any officer of his commission. *Sec. 3, id.*

498. *Same—Duties of regimental, battalion and squadron quartermasters and commissaries, etc.*—That whenever the Secretary of War shall decide that it is necessary and practicable, regimental, battalion, and squadron quartermasters and commissaries shall be required to perform any duties that junior officers of the Quartermaster Corps may properly be required to perform, and regimental and battalion quartermaster and commissary sergeants shall be required to perform any duties that noncommissioned officers or pay clerks of the Quartermaster Corps may properly be required to perform, but such regimental, battalion, and squadron quartermasters and commissaries shall not be required to receipt for any money or property which does not pertain to their respective regiments, battalions, or squadrons, and they shall not be separated from the organization to which they belong. *See 3, id.*

499. *Same—Duties of, extended so as to include receipting for money and property.*—That regimental, battalion, and squadron quartermasters and commissaries shall hereafter be required to perform the duties of officers of the Quatermaster Corps,[1] including the receipting for

[1] *Held*, that although the clause "whenever the Secretary of War shall decide that it is necessary and practicable regimental, battalion, and squadron quartermasters and commissaries shall be required to perform any duties that junior officers of the Quartermaster Corps may properly be required to perform," is affirmative in form, its effect is prohibitive as well as affirmative; that, giving the broadest application to the implied prohibition, it would serve to forbid the detail of any officers except those specifically mentioned in the clause to perform duties that officers of the Quartermaster Corps may properly be

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any money or property pertaining to said corps, when no officer of the Quartermaster Corps is present for such duties, and nothing contained in the Army appropriation act approverd August twenty-fourth, nineteen hundred and twelve, shall hereafter be held or construed so as to prevent competent authority from requiring any officers of the Army to act temporarily as quartermasters wherever there shall be no officers of the Quartermaster Corps, and no regimental, battalion, or squadron quartermasters or commissaries present for such duty. *Act of Mar. 2, 1913 (37 Stat. 706).*

500. *Same—Duties of officers of Quartermaster Corps.*—That such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay Departments shall hereafter be performed by such officer or officers of the Quartermaster Corps as the Secretary of War may designate for the purpose. *Sec. 3, Act of Aug. 24, 1912 (37 Stat. 591).*

501. *Same—Chief of Quartermaster Corps to have rank of major general.*—That there shall be a Chief of the Quartermaster Corps, who shall have the rank of major general while so serving, and who

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required to perform, but that, as the affirmative provision relates only to officers belonging to branches of the Army which have a regimental, battalion, or squadron organization, the implied prohibition should be construed as relating only to the same branches; that the legislation under consideration does not affect the availability of any officers for Quartermaster Corps duty except those belonging to the mobile branches of the line of the Army, and, therefore, all officers, except those belonging to the mobile branches of the line, may continue hereafter, as heretofore, to be employed upon Quartermaster Corps duties, including the duties of post quartermasters, when their employment is necessary to supplement the services of the personnel of the Quartermaster Corps; that regimental, battalion, and squadron quartermasters and commissaries may, under the specific terms of this legislation, be required to perform any duties that may properly be required of junior officers of the Quartermaster Corps, including the duties of post quartermasters, provided such officers be not required to receipt for money or property not pertaining to their respective organizations and are not separated therefrom; that officers commissioned in the mobile branches of the line of the Army, but detached therefrom under the provisions of law and replaced in their respective branches under the provisions of section 27 of the act of February 2, 1901 (31 Stat. 755), may, as occasion arises, be required to perform Quartermaster Corps duties properly incident to the duties for the performance of which they are detached, but may not be detached for the purpose of assigning to them duties pertaining to the Quartermaster Corps; and that all other officers of the mobile branches of the line of the Army are within the implied prohibiton of the new statute and may not be charged with Quartermaster Corps duties.

Held also, that within the meaning of this legislation there is no difference between a memorandum receipt which renders the officer giving it responsible, though not accountable, for the property or funds receipted for, and a receipt which renders him accountable as well as responsible; and that regimental, battalion, and squadron quartermasters and commissaries may not be required to give memorandum receipts for money or property not pertaining to their respective organizations.

Held further, that in the sense of this legislation the line of demarcation which separates money or property pertaining to a regiment, battalion, or squadron from other money or property is the line which separates money or property necessary and proper for the use, preparation, and maintenance of the regiment, battalion, or squadron as a mobile unit of the Army from money or property used or intended for other purposes. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

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shall be appointed by the President, by and with the advice and consent of the Senate, from among the officers of said corps and in accordance with the requirements of section twenty-six of the act of Congress approved February second, nineteen hundred and one, hereinbefore cited. *Sec. 3, id.*

502. *Same—Vacancy in grade of brigadier general not to be filled.*—That when the first vacancy in the grade of brigadier general in the Quartermaster Corps, except a vacancy caused by the expiration of a limited term of appointment, shall hereafter occur that vacancy shall not be filled, but the office in which the vacancy occurs shall immediately cease and determine. *Sec. 3, id.*

503. *Same—Subject to supervision of Chief of Staff.*—That the Quartermaster Corps shall be subject to the supervision of the Chief of Staff to the extent the departments hereby consolidated into said corps have heretofore been subject to such supervision under the terms of the existing law. *Sec. 3, id.*

504. *Same—Immediate appointment of Chief of Quartermaster Corps.*—That for the purpose of carrying into effect the provisions of this section the President is hereby authorized to appoint, by and with the advice and consent of the Senate, the Chief of the Quartermaster Corps herein provided for immediately upon the passage of this act, and it shall be the duty of the said chief, under the direction of the President and the Secretary of War, to put into effect the provisions of this section not less than sixty days after the passage of this act. *Sec. 3, id.*

505. *Same—Civilian employees to be replaced by enlisted men.*[1]—As soon as practicable after the creation of a Quartermaster Corps in the Army not to exceed four thousand civilian employees of that corps, receiving a monthly compensation of not less than thirty dollars nor more than one hundred and seventy-five dollars each, not including civil engineers, superintendents of construction, inspectors of clothing, clothing examiners, inspectors of supplies, inspectors of animals, chemists, veterinarians, freight and passenger rate clerks, civil service employees, and employees of the classified service, employees of the Army transport service and harbor-boat service, and such other employees as may be required for technical work, shall be replaced permanently by not to exceed an equal number of enlisted men of said corps, and all enlisted men of the line of the Army detailed on extra duty in the Quartermaster Corps or as bakers or assistant bakers shall be replaced permanently by not to exceed two thousand enlisted men of said corps; and for the purposes of this act the enlistment in the military service of not to exceed six thousand men, who shall be attached permanently to the Quartermaster Corps and

[1] Note reference to chapter under enlisted men, and reference under that chapter to this paragraph.

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who shall not be counted as a part of the enlisted force provided by law, is hereby authorized: *Provided*, That the enlisted force of the Quartermaster Corps shall consist of not to exceed fifteen master electricians, six hundred sergeants (first class), one thousand and five sergeants, six hundred and fifty corporals, two thousand five hundred privates (first class), one thousand one hundred and ninety privates, and forty-five cooks, all of whom shall receive the same pay and allowances as enlisted men of corresponding grades in the Signal Corps of the Army, and shall be assigned to such duties pertaining to the Quartermaster Corps as the Secretary of War may prescribe: *Provided further*, That the Secretary of War may fix the limits of age within which civilian employees who are actually employed by the Government when this act takes effect and who are to be replaced by enlisted men under the terms of this act may enlist in the Quartermaster Corps: *Provided further*, That nothing in this section shall be held or construed so as to prevent the employment of the class of civilian employees excepted from the provisions of this act or the continued employment of civilians included in the act until such latter employees have been replaced by enlisted men of the Quartermaster Corps.[1] *Sec. 4, Act of Aug. 24, 1912* (*37 Stat. 593*).

506. *Same—Decrease in enlisted men.*—That the enlisted force of the Quartermaster Corps shall consist of not to exceed fifteen master electricians, six hundred sergeants (first class), nine hundred and seventy-five sergeants, six hundred and twenty-five corporals, two thousand five hundred privates (first class), one thousand one hundred and ninety privates, and ninety-five cooks, all of whom shall receive the same pay and allowances as enlisted men of corresponding grades in the Signal Corps of the Army, and shall be assigned to such duties pertaining to the Quartermaster Corps as the Secretary of War may prescribe. *Act of Apr. 27, 1914* (*38 Stat. 355*).

[1] *Held*, that the portion of said section describing the classes of employees not included within the provisions of that portion of the act requiring the substitution of civilian employees in the Quartermaster Corps by enlisted men, refers to the persons and not to the positions held by them, and that as said positions are vacated they may be filled by the enlisted men authorized by said act; *held further*, that under the authority of the proviso to the effect that nothing in said section shall be held or construed so as to prevent the employment of the classes of civilian employees excepted from the provisions of the act, the Secretary of War may properly direct that, as to the employees required for technical work of the classes specified, vacancies occurring may be filled in the future as in the past through the civil service, and in this way full operation can be given to the entire section authorizing the enlistment of men for the purpose of taking the place of civilian employees. (Bulletin No. 20, Dig. Opins. J. A. G., Oct. 19, 1912.)

Held, that service as a civilian employee in the Quartermaster's Department prior to enlistment in the Quartermaster Corps under the provisions of said section can not be counted as enlisted service either for the purpose of computing longevity pay after enlistment or for the purpose of retirement. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

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THE QUARTERMASTER'S DEPARTMENT.

507. *Organization.*[1]—The Quartermaster's Department shall consist of one Quartermaster-General with the rank of brigadier-general, six assistant quartermasters-general with the rank of colonel, nine deputy quartermasters-general with the rank of lieutenant-colonel, twenty quartermasters with the rank of major, sixty quartermasters with the rank of captain, mounted, * * * and one hundred and fifty quartermaster-sergeants.[2] *Sec. 16, Act of Feb. 2, 1901 (31 Stat. 751).*

508. *Same—Increase in number.*—The Quartermaster's Department is hereby increased by two colonels, three lieutenant colonels, seven majors, and eighteen captains, the vacancies thus created to be filled by promotion and detail in accordance with section twenty-six of the Act approved February second, nineteen hundred and one. *Act of Mar. 3, 1911 (36 Stat. 1045).*

(For provision as to number of officers in grades of colonel and lieutenant-colonel, see paragraph 497, ante.)

509. *Promotions, transfers, and details.*—So long as there remain any officers holding permanent appointments in the * * * Quartermaster's Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which officers so promoted shall hold their appointments.[3] *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

510. *Details.*—When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion

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[1] For provision as to the number of officers in the grades of colonel, lieutenant-colonel, major, and captain in the Quartermaster Corps, see paragraph 497, ante. More thoroughly to comprehend the consolidation of the three department into the Quartermaster Corps, the old law is given.

[2] Section 16 of the act of February 2, 1901 (31 Stat. 751), contained the requirement that "the President is authorized to continue in the service during the present emergency, for duty in the Philippine Islands and on transports, twenty-four captains and assistant quartermasters of volunteers." The same enactment provided that "all vacancies in the grade of colonel, lieutenant-colonel, and major created or caused by this section shall be filled by promotion according to seniority as now prescribed by law." It also provided "that to fill original vacancies in the grade of captain created by this act in the Quartermaster's Department the President is authorized to appoint officers of volunteers commissioned in the Quartermaster's Department since April 21, 1898."

[3] For provision governing filling of vacancies in the Quartermaster Corps, and providing that when the vacancy occurs in a grade not above that of colonel it shall be filled, if possible, by the promotion of an officer who would have been entitled to promotion to that particular vacancy if the consolidation of the departments had never occurred (See par. 495, ante.)

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as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps. *Id.*

511. *Same—To be made from grade in which vacancy exists.*—Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe.[1] *Id.*

512. *Vacancy in office of storekeeper not to be filled.*—When a vacancy shall occur through death, retirement, or other separation from active service in the office of storekeeper in the Quartermaster's Department and Ordnance Department, respectively, now provided for by law, said offices shall cease to exist.[2] *Acts of Mar. 2, 1899 (30 Stat. 977), and Feb. 2, 1901 (31 Stat. 748).*

513. *Military storekeeper on duty at White House.*—The military storekeeper now on duty at the White House as doorkeeper to the President may be continued in that employment and shall receive the full pay and allowances of his grade from the date of his retirement until relieved by the President. *Act of June 30, 1902 (32 Stat. 511).*

514. *Post quartermaster-sergeants.*—That the Secretary of War is authorized to appoint, on the recommendation of the Quartermaster-General, as many post quartermaster-sergeants, not to exceed one hundred and fifty,[3] as he may deem necessary for the interests of the service, said sergeants to be selected by examination from the most competent enlisted men of the Army who have served at least four years, and whose character and education shall fit them to take charge of public property and to act as clerks and assistants to post and other quartermasters. Said post quartermaster-sergeants shall, so far as practicable, perform the duties of storekeepers and clerks, in lieu of citizen employees. The post quartermaster-sergeans shall be subject to the Rules and Articles of War and shall receive for their services the same pay and allowances as ordnance-sergeants.[4] *Acts of July 5, 1884 (23 Stat. 109), July 8, 1898 (30 Stat. 728), and Feb. 2, 1901 (31 id. 751).*

For provision that post quartermaster sergeants shall hereafter be known as quartermaster sergeants of the Quartermaster Corps, see paragraph 496, ante.

For provision that regimental, battalion, and squadron quartermaster sergeants shall, in the discretion of the Secretary of War, be required to perform

[1] For statutory regulations respecting details to the staff, see the title Details to the Staff, in the chapter entitled The Staff Departments.

[2] The above statute replaces a similar restriction which was contained in section 2 of the act of March 3, 1875 (18 Stat. 339); the act of February 2, 1901, contained the same restriction. The office of storekeeper in the Quartermaster's Department, by the retirement of the last incumbent, has ceased to exist as a grade of rank on the active list.

[3] Twenty-five post quartermaster-sergeants added to the existing establishment by the act of July 8, 1898 (30 Stat. 728); forty added by section 16, act of February 2, 1901 (31 id., 751).

[4] For corps of army service men, see chapter entitled The Military Academy.

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any duties that noncommissioned officers or pay clerks of the Quartermaster Corps may properly be required to perform, see paragraph 498, ante.

Held, that the sergeants whose enlistment is authorized by section 4 of the act of August 24, 1912 (37 Stat. 591), are a distinct grade from those formerly known as post quartermaster sergeants and post commissary sergeants, and that no change was made by the law in the status, pay, or allowances of the latter grade, but duties formerly pertaining to post commissary and post quartermaster sergeants may now be performed by any of them under their designation of quartermaster sergeants. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

515. *Duties.*—It shall be the duty of the officers of the Quartermaster's Department, under the direction of the Secretary of War, to purchase and distribute to the Army all military stores and supplies, requisite for its use, which other corps are not directed by law to provide; to furnish means of transportation for the Army, its military stores and supplies, and to provide for and pay all incidental expenses of the military service which other corps are not directed to provide for and pay. *Sec. 1133, R. S.*

For provision that regimental, battalion, and squadron quartermasters shall, in the discretion of the Secretary of War, be required to perform any duties that junior officers of the Quartermaster Corps may properly be required to perform, etc., see paragraph 498, ante.

For provision that such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay Departments shall hereafter be performed by such officer or officers of the Quartermaster Corps as the Secretary of War may designate for the purpose, see paragraph 500, ante.

516. *Supplies, purchase of kind and amount to be prescribed by Secretary of War.*—The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster Departments of the Army, and the duties and powers thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations, be intrusted with the same; and shall fix and make reasonable allowances for the store rent and storage necessary for the safe-keeping of all military stores and supplies.[1] *Sec. 219, R. S.*

517. *Same—For naval and marine detachments.*—The officers of the Quartermaster's Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in cooperation with land troops, and during the time such detachment is so acting or proceeding to act, furnish the officers and seamen with camp equipage, together

[1] See sec. 1134, R. S., authorizing the Secretary of War to order assistant rtermasters to do duty as assistant commissaries of subsistence.

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with transportation for said officers, seamen, and marines, their baggage, provisions, and cannon, and shall furnish the naval officer commanding any such detachment, and his necessary aids, with horses, accouterments, and forage. *Sec. 1135, R. S.*

518. *Post exchange, use of public buildings and transportation for.*—Hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892 (27 Stat. 178).*

For a number of years an item has appeared annually in the Army appropriation act for continuing the construction, equipment, and maintenance of suitable buildings at military posts and stations for the conduct of the post exchange, school, library, reading, lunch, amusement rooms, and gymnasium, including repairs to building erected at private cost, under authority from Congress, to be expended in the discretion and under the direction of the Secretary of War; with a proviso limiting the annual expenditure at any one post or station to $40,000. (See act of Mar. 2, 1913, 37 Stat. 715.)

519. *Officers not to be interested in purchases or sales for department.*—No officer belonging to the Quartermaster's Department, or doing the duty of a quartermaster or assistant quartermaster, shall be concerned, directly or indirectly, in the purchase or sale of any article intended for or appertaining to said department of service, except on account of the United States; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business connected with the duties of his office, other than that which may be allowed by law. *Sec. 1138 R. S.*

520. *Payment of subscriptions to newspapers, etc., in advance.*—That hereafter subscriptions to newspapers, magazines, periodicals, and other publications, purchased from funds of the Quartermaster Corps, may be paid for in advance. *Act of Apr. 27, 1914 (38 Stat. 362).*

521. *Sale of surplus ice, electric current, etc., from Government plants where no competition.*—Whenever the ice machines, steam laundries, and electric plants shall not come in competition with private enterprise for sale to the public, and in the opinion of the Secretary of War it becomes necessary to the economical use and administration of such ice machines, steam laundries, and electric plants as have been or may hereafter be established in pursuance of law, surplus ice may be disposed of, laundry work may be done for other branches of the Government, and surplus electric light and power may be sold on such terms and in accordance with such regulations as may be prescribed by the Secretary of War: *Provided*, That the funds received from such sales and in payment of such laundry work shall be used to defray the cost of operation of said ice,

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laundry, and electric plants; and the sales and expenditures herein provided for shall be accounted for in accordance with the methods prescribed by law, and any sums remaining, after such cost of maintenance and operation have been defrayed, shall be deposited in the Treasury to the credit of the appropriation from which the cost of operation of such plant is paid. *Act of Mar. 2, 1913 (37 Stat. 713).*

The annual appropriation act for the support of the Army has, for several years, contained a provision similar to this. On the subject of laundries, see General Orders, 68, War Department, 1910.

522. *Proceeds of sales of serviceable supplies to remain available through fiscal year following sale.*—Hereafter all moneys arising from disposition of serviceable quartermaster's supplies or stores, authorized by law and regulations, shall remain available throughout the fiscal year following that in which the disposition was effected, for the purposes of that appropriation from which such supplies were authorized to be supplied at the time of the disposition. *Act of Mar. 23, 1910 (36 Stat. 257).*

523. *Disbursing officers authorized to pay pressing obligations from total available balance where insufficient balance, provided the apportionment has been made.*—Hereafter whenever pressing obligations are required to be paid by a disbursing officer of the Quartermaster's Department and there is an insufficient balance to his official credit under the proper appropriation or appropriations for the purpose, he is authorized to make payment from the total available balance to his official credit, provided sufficient funds under the proper appropriation or appropriations have been apportioned by the Quartermaster-General for the expenditure. When such disbursements are made the accounts of the disbursing officer shall show the charging of the proper appropriations, the balances under which will be adjusted by the disbursing officer on receipt of funds or by the accounting officers of the Treasury. *Act of Mar. 3, 1909 (35 Stat. 747).*

524. *Transportation of troops.*—The transportation of troops, munitions of war, equipments, military property, and stores throughout the United States shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint.[1] *Sec. 220, R. S.*

[1] The transportation of organized bodies, or detachments of troops under orders from competent authority directing travel to be performed, is regulated by the requirements of this section, as modified from time to time by the provisions of the annual acts of appropriation for the support of the Army. See paragraphs 732–739, A. R., 1913, for traveling expenses of civilian employees in any branch of the military service. See paragraphs 1135–1139, A. R., 1913, for transportation of baggage on change of station, retirement, etc. See paragraphs 1128–34, A. R., 1913, for parlor and sleeping car accommodations to which officers traveling with troops, noncommissioned officers, army nurses, civilian employees in the military service, etc., are entitled when traveling under orders.

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525. *Same—Preference to be given over other traffic in time of actual or threatened war.*—In time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. *Sec. 2, Act of June 29, 1906 (34 Stat. 587).*

526. *Same—Of baggage in excess of allowances, reimbursement for.*—For transportation of the Army and its supplies, including transportation of the troops when moving either by land or water, and of their baggage, including the cost of packing and crating: *Provided*, That hereafter baggage in excess of regulation change of station allowances may be shipped with such allowances, and reimbursement collected for transportation charges on such excess, * * * dollars. *Act of Mar. 23, 1910 (36 Stat. 255).*

(See note to paragraph 678, post, for holdings of the Comptroller of the Treasury as to transportation of the personal baggage of an officer at Government expense.)

527. *Same—Officers' private mounts—Reimbursement for cost of transportation.*—That hereafter private mounts of officers in execess of the authorized mounts may be shipped on Government bill of lading with authorized mounts, and reimbursement collected for transportation charges on such excess mounts. *Act of Apr. 27, 1914 (38 Stat. 365).*

528. *Same—Use of transports, restrictions, Navy, Marine Corps, etc.*—No part of this appropriation shall be applied to the payment of the expenses of using transports in any other Government work than the transportation of the Army, its supplies and employees; and when, in the opinion of the Secretary of War, accommodations are available, transportation may be provided for the officers, enlisted men, employees, and supplies of the Navy, the Marine Corps, and for members and employees of the Philippine and Hawaiian governments, officers of the War Department, Members of Congress, other officers of the Government while traveling on official business, and without expense to the United States, for the families of those persons herein authorized to be transported, and when accommodations are available, transportation may be provided for general passengers to the island of Guam, rates and regulations therefor to be prescribed by the Secretary of War. *Act of Mar. 2, 1907 (34 Stat. 1170).*

529. *Same—Officers, etc. of Revenue-Cutter Service, and secretaries and supplies of Army and Navy department of Y. M. C. A.*—Hereafter when, in the opinion of the Secretary of War, accommodations are available, transportation on vessels of the Army transport

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service may be furnished the officers, employees, and enlisted men of the Revenue-Cutter Service, and their families, without expense to the United States, and also secretaries and supplies of the Army and Navy department of the Young Men's Christian Association. *Act of Mar. 3, 1911 (36 Stat. 1051).*

530. *Same—Merchandise of American production to residents, etc., of island of Guam.*—Hereafter when there is cargo space available without displacing military supplies, transportation may be provided for merchandise of American production consigned to residents and mercantile firms of the island of Guam, rates and regulations therefor to be prescribed by the Secretary of War. *Id.*

531. *Same—Over land-grant and bond-aided railroads.*—For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service. *Act of Mar. 2, 1913 (37 Stat. 715).*

[Substantially the same provision has been incorporated in each annual appropriation act since it was first contained in the act of Feb. 26, 1900, 31 Stat., 214.]

532. *Same—Property for Government surveys, National Museum, etc.*—Hereafter the Quartermaster-General and his officers, under

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his instructions, wherever stationed, shall receive, transport, and be responsible for all property turned over to them, or any one of them, by the officers or agents of any Government survey, for the National Museum, or for the civil or naval departments of the Government, in Washington or elsewhere, under the regulations governing the transportation of army supplies, the amount paid for such transportation to be refunded or paid by the bureau to which such property or stores pertain.[1] *Act of July 5, 1884 (23 Stat. 111).*

533. *Same—To use means of herein provided.*—Hereafter in the performance of their official and military duties officers of the Army are authorized, under such regulations as may be established by the Secretary of War, to use means of transportation herein provided for. *Act of Mar. 3, 1911 (36 Stat. 1051).*

[This paragraph refers to the appropriation in this act for the purchase of vehicles, boats, ships, etc.]

534. *Taking and use of vessels as cruisers or transports; payment.*—Any steamships so registered under the provisions of this act may be taken and used by the United States as cruisers or transports upon payment to the owners of the fair actual value of the same at the time of the taking, and if there shall be a disagreement as to the fair actual value at the time of taking between the United States and the owners, then the same shall be determined by two impartial appraisers, one to be appointed by each of said parties, who, in case of disagreement, shall select a third, the award of any two of the three so chosen to be final and conclusive. *Sec. 4, Act May 10, 1892 (27 Stat. 28).*

[The foregoing has reference to certain steamships, built abroad, which, under the act cited, were granted American registry. The act is quite specific in describing the vessels, and it is doubtful if the act has any future application. The S. S. *New York* and *Paris* would appear to have been the only vessels coming within the terms of the law.

See paragraph 1235, contracts and purchases, for act of July 5, 1884, providing that the purchase of ships and other seagoing vessels, etc., shall be made by contract, after due legal advertisement, except in cases of extreme emergency.]

535. *Purchase or hire of vehicles, etc., for official, military and garrison purposes.*—Transportation of the Army and its supplies; * * * For the purchase, hire, operation, maintenance, and repair of such harness, wagons, carts, drays, and other vehicles as are required for the transportation of troops and supplies, and for official, military, and garrison purposes. * * * For the purchase and

[1] When a contract provides that upon the arrival of a train the Quartermaster's Department shall examine the stores, and, if found to be in good condition and delivered in proper time, shall so indorse the bill of lading, upon which payment shall be made, it will be presumed that such a certificate was made and given when it appears that the contract was fully performed. (Curtis v. U. S., 34 Ct. Cls., 5.)

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repair of ships, boats, and other vessels required for the transportation of troops and supplies and for official, military and garrison purposes; * * * *Provided*, * * * That hereafter in the performance of their official and military duties officers of the Army are authorized, under such regulations as may be established by the Secretary of War, to use means of transportation herein provided for.[1] * * * *Act of Mar. 3, 1911 (36 Stat. 1051).*

536. *Transports, Army, equipment of with lifeboats and rafts.*—The sum of three hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of equipping all Army transports with all lifeboats and rafts, including such number of steel self-righting, self-bailing motor lifeboats for each vessel as the Secretary of War may deem advisable, necessary to accommodate every person for whom transportation facilities are now provided on said transports, and the crew of said transports; said sum to be expended under the direction of the Secretary of War, who is hereby directed to make to Congress an itemized statement showing how the sum aforesaid has been expended. *Act of June 14, 1912 (37 Stat. 133).*

537. *Purchase of draft animals, restrictions.*—Hereafter no part of this appropriation shall be expended in the purchase for the Army of draft animals until the number on hand shall be reduced to five thousand, and hereafter shall only be expended for the purchase of a number sufficient to keep the supply up to five thousand.[2] *Act of Sept. 22, 1888 (25 Stat. 486).*

538. *Same—Limited to number actually required for the service.*—The number of draft animals purchased from this appropriation, added to those now on hand, shall be limited to such numbers as are actually required for the service, and all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. *Acts of July 5, 1884 (23 Stat. 109); Mar. 2, 1901 (31 id., 907).*

(See act of March 2, 1913 (37 Stat. 716), which provides for the purchase and hire of draft and pack animals in such numbers as are actually required for the service, including reasonable provision for replacing unserviceable animals.)

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[1] See paragraphs 1101–1115 A. R. 1913.

[2] By the act of June 7, 1898 (30 Stat. 433), the operation of this statute was suspended, at the discretion of the Secretary of War, during the period of the existing war; by the act of March 3, 1899 (id., 1350), its operation was further suspended, at the discretion of the Secretary of War, and subject to the further discretion of Congress, until March 1, 1900; by the act of February 24, 1900 (31 Stat. 32), the suspension was extended, under the conditions above set forth, until June 30, 1901.

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539. *Same—Horses for cavalry, artillery, etc., restrictions.*—For the purchase of horses for the cavalry and artillery, and for the Indian scouts and for such infantry and members of the Hospital Corps in field campaigns as may be required to be mounted, and the expenses incident thereto: * * *: *Provided*, That the number of horses purchased under this appropriation, added to the number on hand, shall not at any time exceed the number of enlisted men and Indian scouts in the mounted service, and that no part of this appropriation shall be paid out for horses not purchased by contract after competition duly invited by the Quartermaster's Department, and an inspection by such department, all under the direction and authority of the Secretary of War.[1] *Act of Mar. 15, 1898 (30 Stat. 323).*

540. *Same—To be limited to actual needs of the service.*—The number of horses purchased under this appropriation, added to the number on hand, shall be limited to the actual needs of the mounted service; and unless otherwise ordered by the Secretary of War no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such department, all under the direction and authority of the Secretary of War. *Act of Mar. 2, 1901 (31 Stat. 906).*

(See paragraph 1235, contracts and purchases, as to purchases of horses, mules, etc., by contract, after due legal advertisement, except in cases of extreme emergency.)

541. *Same—Open market purchases at military posts, etc., at maximum price fixed by Secretary of War.*—The number of horses purchased under this appropriation, added to the number now on hand, shall be limited to the actual needs of the mounted service, including reasonable provisions for remounts, and, unless otherwise ordered by the Secretary of War, no part of this appropriation shall be paid out for horses not purchased by contract after competition duly invited by the Quartermaster's Department and an inspection under the direction and authority of the Secretary of War. When practicable, horses shall be purchased in the open market at all military posts or stations, when needed, at a maximum price to be fixed by the Secretary of War: *Provided*, That no part of this appropriation shall be used for breeding purposes: *Provided further*, That no part of this appropriation shall be expended for the purchase

[1] By the act of June 7, 1898 (30 Stat. 433), the operation of this statute was suspended, at the discretion of the Secretary of War, during the period of the existing war; by the act of March 3, 1899 (id., 1351), its operation was further suspended, at the discretion of the Secretary of War, and subject to the further discretion of Congress, until March 1, 1900; by the act of February 24, 1900 (31 Stat. 32), the suspension was extended, under the conditions above set forth, until June 30, 1901.

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of any horses below the standard set by Army Regulations for Cavalry and Artillery horses, except when purchased for instruction of cadets at the United States Military Academy: *Provided further*, That hereafter from the enlisted force of the Army now provided by law the President may authorize the organization of remount detachments at each of the remount depots, and may authorize the appointment therein of such noncommissioned officers, mechanics, artificers, farriers, horseshoers, and cooks as may be necessary for the administration of such remount depot: *Provided*, That nothing herein shall be so construed as to authorize an increase in the total number of enlisted men of the Army now authorized by law.[1] *Act of Mar. 3, 1911 (36 Stat. 1049)*.

542. *Same—Including horses for service schools, staff colleges, etc.*—For the purchase of horses of ages, sex, and size as may be prescribed by the Secretary of War, for remounts, for officers entitled to public mounts, for the Cavalry, Artillery, Signal Corps, and Engineers, the United States Military Academy, service schools, and staff colleges, and for the Indian scouts, and for such infantry and members of the Hospital Corps in field campaigns as may be required to be mounted, and the expenses incident thereto, and for the hire of employees: *Provided*, That the number of horses purchased under this appropriation, added to the number now on hand, shall be limited to the actual needs of the mounted service, including reasonable provisions for remounts, and, unless otherwise ordered by the Secretary of War, no part of this appropriation shall be paid out for horses not purchased by contract after competition duly invited by the Quartermaster's Department and an inspection under the direction and authority of the Secretary of War. When practicable, horses shall be purchased in open market at all military posts or stations, when needed, at a maximum price to be fixed by the Secretary of War: *Provided further*, That no part of this appropriation shall be expended for the purchase of any horses below the standard set by Army Regulations for Cavalry and Artillery horses, except when purchased as remounts, or for instruction of cadets at the United States Military Academy. No part of this appropriation shall be expended for polo ponies except for West Point Military Academy, and such ponies shall not be used at any other place. *Act of Aug. 24, 1912 (37 Stat. 581)*.

543. *Same—Not to take part in horse shows or horse races.*—That hereafter no part of this or any other appropriation shall be expended for defraying expenses of officers, enlisted man, or horses in attending or taking part in horse shows or horse races; but nothing

[1] The annual appropriation act, Aug. 24, 1912 (37 Stat. 581), is to the same effect.

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in this proviso shall be held to apply to the officers, enlisted men, and horses of any troop, battery, or company which shall, by order or permission of the Secretary of War, and within the limits of the United States, attend any horse show or any State, county, or municipal fair, celebration, or exhibition. *Act of Apr. 27, 1914 (38 Stat. 363).*

544. *Veterinarians, employment of, for animals not connected with the cavalry and artillery.*—Such number of veterinarians as the Secretary of War may authorize shall be employed to attend the animals pertaining to the Quartermaster's or other Departments not directly connected with the cavalry and artillery regiments, at a compensation not exceeding one hundred dollars per month. *Sec. 20, Act of Feb. 2, 1901 (31 Stat. 753).*

545. *Barracks and quarters, construction of permanent.*—Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed twenty thousand dollars, shall be erected unless by special authority of Congress.[1] *Sec. 1136, R. S.*

546. *Limit of cost.*—Hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.[2] *Act of Feb. 27, 1893 (27 Stat. 484).*

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[1] The Quartermaster's Department alone is charged with the duty and responsibility of erecting quarters. (Travelers *v.* U. S., 5 Ct. Cls., 329.)

[2] This paragraph continued to appear as a proviso in several acts of appropriation for the support of the Army prior to the act of February 27, 1893 (27 Stat. 454). See acts of March 3, 1885 (23 Stat 360); June 30, 1886 (24 id., 97); February 9, 1887 (id., 399); September 22, 1888 (25 id., 486); March 2, 1889 (id., 830); June 13, 1890 (26 id., 154); February 24, 1891 (id., 776); July 16, 1892 (27 id., 180); February 27, 1893 (id., 484). The same act requires that the posts at which hospital stewards' quarters are to be constructed shall be designated by the Secretary of War, and that such quarters shall, whenever practicable, be built by contract. 27 Stat. 484.

Where a contract provides that an officer named in the contract may, on inspection, accept or reject any part of the work done under it if not, in his opinion, "strictly in accordance with the drawings and specifications," his decision, in the absence of fraud, or such gross error as would imply bad faith, is final. (Driscoll *v.* U. S., 34 Ct. Cls., 508.) Such action on the part of the officer being final and conclusive, it becomes the duty of the contractor at his own expense, to "remedy any defect or unsatisfactory material or work" so rejected, by conforming the same to the drawings and specifications. (Kihlberg *v.* U. S., 97 U. S., 97; Kimball *v.* U. S., 24 Ct. Cls., 122; Gleason *v.* Gosnell, 33 Ct. Cls. R., 65; Quinn *v* U. S., 99 U. S., 82; Sweeney *v.* U. S., 109 id., 618;

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547. *Same.*—No money appropriated for military posts shall be expended for the construction of quarters for officers of the army, or for barracks and quarters for the artillery, the total cost of which, including the heating and plumbing apparatus, wiring and fixtures shall exceed in the case of quarters of a general officer, the sum of fifteen thousand dollars, of a colonel or an officer above the rank of captain, twelve thousand dollars, and of an officer of and below the rank of captain, nine thousand dollars. *Act of Mar. 4, 1909 (35 Stat. 1003).*

548. *Shelter in the Philippine Islands.*—For the proper shelter and protection of officers and enlisted men of the Army of the United States lawfully on duty in the Philippine Islands, including the acquisition of title to building sites where necessary, to be expended in the discretion of the President, and to be immediately available, one million five hundred thousand dollars;[1] and the President is directed to report a detailed statement of the expenditure of this sum to each session of Congress until the entire appropriation is expended. *Act of June 30, 1902 (32 Stats. 516).*

549. *Same—For seacoast artillery, limitation on cost.*—For the erection of barracks and quarters for artillery in connection with the project adopted for seacoast defense there shall not hereafter be expended at any one point more than one thousand two hundred dollars per man for each man required for one relief to man the guns at the post up to eighty-three men, the present permanent strength of a battery, enlisted and commissioned, and for each man required beyond this number six hundred dollars per man, from any appropriation made by Congress, unless special authority of Congress be granted for a greater expenditure.[2] *Act of June 6, 1900 (31 Stat. 624).*

550. *Quarters for hospital stewards, Secretary of War to designate posts at which to be constructed.*—Hereafter the posts at which such

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Martinsburg Co. *v.* March, 114 id., 549; Chicago R. R. Co. *v.* Price, 38 id., 185; Ogden *v.* U. S., 60 Fed. Rep., 725; Elliott *v.* R. R. Co., 74 id., 711.)

Where extensions of time are granted to complete a contract, all prior delays or defaults are waived and can not be revived. (Gleason & Gosnell *v.* U. S., 33 Ct. Cls., 65; Pigeon *v.* U. S., 27 id., 167, 175.)

Where additional work was necessary, and the officer in charge ordered it to be done, and the Government received the benefit of it, the Government is liable. (Haliday *v.* U. S., 33 Ct. Cls., 453.)

Where performance is prevented by act of God no breach can be assigned, although no reference was made thereto in the contract. (Gleason & Gosnell *v.* U. S., 33 Ct. Cls., 65; McDermott *v.* Jones, 2 Wall., 1, 7; Satterlee, administrator, *v.* U. S., 30 Ct. Cls., 31, 50, and cases there cited.)

[1] Each subsequent appropriation for barracks and quarters, Philippine Islands, has contained the following language: "Continuing the work of providing for the proper shelter and protection of officers and enlisted men of the Army of the United States lawfully on duty in the Philippine Islands. * * *"

[2] This enactment replaces the requirement of the act of July 1, 1898 (30 Stat. 629), which restricted expenditures on artillery posts for seacoast defense to $60,000 for a one-battery post and $20,000 additional for each additional battery.

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quarters [for hospital stewards], shall be constructed shall oe designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. *Act of Feb. 27, 1893 (27 Stat. 484).*

551. *Quarters in kind to officers.*—At all posts and stations where there are public quarters belonging to the United States officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms as is stated in the following table, namely: Second lieutenants, two rooms; first lieutenants, three rooms; captains, four rooms; majors, five rooms; lieutenant-colonels, six rooms; colonels, seven rooms; brigadier-generals, eight rooms; major-generals, nine rooms; lieutenant-general, ten rooms.[1] *Act of Mar. 2, 1907 (34 Stat. 1168).* See paragraph 668, post.

[1] For rules respecting the allowance and assignment of quarters at military posts, see paragraphs 1024–1035, 1044, 1390, and 1397, A. R., 1913.

Held, that with but very few exceptions made by law the certificate of approval of an officer is not intended to be conclusive upon the accounting officers, but that the latter must render a decision on the legality of the claim for payment or for crediting an account upon the facts; that upon them is cast the responsibility for securing the facts and upon other officers the duty of furnishing upon request such evidence in addition to certificates as may be called for by the accounting officers; that this right to call for evidence is inseparable from the duty to audit and to decide questions of law and fact, and that it must be exercised reasonably as must any public duty, but that the accounting officer, and not an administrative officer incurring liabilities or expending public funds, must determine the extent to which it may be necessary to go in any particular case in collecting the evidence to establish what he believes to be the essential fact as a basis for decision; that the certificate that public quarters at a post are fully occupied should be accepted as prima facie evidence of the facts underlying the conclusion certified to but should not be considered as the best evidence in all cases nor as relieving the Auditor of responsibility of determining the facts and securing the evidence necessary to a decision.

Held further, that the fact that an officer's application for assignment of quarters, in kind was denied did not entitle him to commutation of quarters, if in fact there were public quarters at the post or station which might have been assigned to him, but that, under existing conditions as to construction of houses, rooms in excess of the authorized allowance in a single house assigned to and occupied by an officer and his family were not rooms that must necessarily have been assigned to another officer, and that while such conditions existed these excess rooms were not quarters and probably ought not to have been provided with furniture or light or separate heating; that commutation of quarters for an officer on duty at a post where there were public quarters could not be granted by an order; that the facts determined the right and that when the only rooms unoccupied were rooms in single houses in excess of the authorized allowance of the occupants of those houses, but not adapted for separate quarters, there were no public quarters within the meaning of the law, but that the contrary was true where there were quarters occupied by persons not entitled to quarters; that the question whether or not there were inhabitable although undesirable public quarters and all other questions involved in the payment of commutation must be decided by the Auditor or Comptroller in each case, and that while they might prefer to accept the decision of other officers they could not shift their duty in this manner, and must accept certificates of facts and conclusions only so far as they believed the situation justified that course. (Asst. Comp. W. W. Warwick, Aug. 18, 1913.)

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552. *Same—Officers temporarily absent not to lose right to.*—Hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent. *Act of Feb. 27, 1893 (27 Stat. 480).*

553. *Shooting galleries and ranges.*—For shelter, shooting galleries, ranges for small-arms target practice, repairs, and expenses incident thereto, including flour or paste for marking targets, hire of employees, such ranges and galleries to be open, as far as practicable, to the National Guard and organized rifle clubs under regulations to be prescribed by the Secretary of War. *Act of Mar. 2, 1913 (37 Stat. 717).*

554. *Fuel and forage allowance.*—Allowance of or commutation for fuel to commissioned officers is hereby prohibited; but fuel may be furnished to the officers of the Army by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, according to the regulations now in existence; and forage in kind may be furnished to the officers of the Army by the Quartermaster's Department, only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the General, five horses;
To the Lieutenant-General, four horses;
To a major-general, three horses;
To a brigadier-general, three horses;
To a colonel, two horses;
To a lieutenant-colonel, two horses;
To a major, two horses;
To a captain (mounted), two horses;
To a lieutenant (mounted), two horses;
To an adjutant, two horses;
To a regimental quartermaster, two horses.[1] *Sec. 8, Act of June 18, 1878 (20 Stat. 150).*

[1] This statute and the act of February 24, 1881 (21 Stat. 347), have been regarded as repealing sections 1271 and 1272, Revised Statutes, and imposing the additional requirement that the horses shall not only be "actually kept," but also "owned" by officers in the performance of their military duties. In a decision dated January 23, 1913 (19 Comp. Dec., 460), the Comptroller held that these acts did not entirely repeal sections 1271 and 1272, Revised Statutes, but merely imposed the added condition upon officers of the Army serving in this country, which is that they shall not only *keep* their horses in the military service in the performance of their official military duties but that they shall actually *own* them as well; and that "the issue of forage to military attaches abroad is governed by section 1272 of the Revised Statutes, under which such officers are only required to actually *keep* their horses in the service when on

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555. *Fuel allowance limited to actual personal necessities.*—Hereafter, fuel may be furnished to commissioned officers on the active list by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, the amount so furnished to each to be limited to the officer's actual personal necessities as certified to by him.[1] *Act of June 12, 1906 (34 Stat. 250).*

556. *Heat and light allowance, limited to that actually necessary for authorized allowance of quarters.*—Hereafter the heat and light actually necessary for the authorized allowance of quarters for officers and enlisted men shall be furnished at the expense of the United States under such regulations as the Secretary of War may prescribe.[2] *Act of Mar. 2, 1907 (34 Stat. 1167).*

557. *Forage, no discrimination against officers serving east of Mississippi River.*—There shall be no discrimination in the issue of forage against officers serving east of the Mississippi River, provided they are required by law to be mounted, and actually keep and own their animals. *Act of Feb. 24, 1881 (21 Stat. 347).*

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duty, and at the place where they are on duty, to be entitled to draw the authorized allowance of forage for them."

The right conferred upon officers of the Army by the Act of June 18, 1878 (20 Stat. 150), to purchase fuel for their actual use only, in the manner and at the terms prescribed by said Act, pertains to all officers of the Army, irrespective of the nature of the duties upon which they are engaged. No part of the cost of fuel so sold is properly chargeable to the appropriation for any public work, unless provision is expressly made therein for such cost. (3 Dig. 2d Comp. Dec., par. 655.) For allowances of fuel as established by regulation, see par. 1044, A. R., 1913.

For regulations as to forage ration, bedding, right of officer to purchase forage for two horses kept for his own use, etc., see paragraphs 1077–1085, A. R., 1913.

For a case in which certain officers of the Army were ordered by the Secretary of War to make restitution to the United States of certain sums of money representing quantities of fuel which had been consumed by them without being paid for as required by law, see Gen. Court-martial Orders No. 85, War Dept., of 1882.

[1] See par. 1044, A. R., 1913, for table showing allowance of rooms, fuel, and cooking and heating stoves for officers.

Held, that upon the evidence submitted the conclusion would not at present be adopted that the fuel allowances prescribed in the regulations were largely in excess of the quantities of fuel actually necessary for heating the authorized allowance of quarters for officers, and until the Secretary of War had had time to consider and amend said regulations the accounting officers would continue to assume that the quantities of fuel therein prescribed did not exceed the quantities necessary.

With reference to the payment of the value of the fuel allowance to officers on detached service in foreign countries, *Held*, that the amendment to the regulations authorizing such payment at the local rates of fuel at the place where the officer is serving, should be interpreted as requiring, in a case to which the regulation applies, a computation based upon the value of the equivalent of the wood allowance in the fuel actually used at the local price of such fuel and not upon the price of oak wood at such place where the same was not actually used for fuel. (Asst. Comp. W. W. Warwick, Sept. 23, 1913.)

[2] For regulations as to lighting quarters and barracks, etc., at military posts, see paragraphs 1050–61, A. R., 1913.

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558. *Horses owned by officers ordered to duty beyond seas, etc., to be purchased by the Government.*—Hereafter when a mounted officer is ordered to duty beyond the seas or to make a change of station in the United States in which the cost of transportation for his authorized number of owned horses exceeds the sum at the time allowed for that purpose in the Army Regulations, the Secretary of War is authorized, under such regulations in respect to inspection and valuation as he may prescribe, in his discretion to permit the purchase of said horses by the Quartermaster's Department, at a price not exceeding the average contract price paid for horses during the preceding fiscal year, the exact price to be fixed by a board of officers. *Act of Mar. 23, 1910 (36 Stat. 254).*

(This provision amends the act of March 2, 1903, 32 Stat. 937.)

559. *Same—Not to be deprived of forage, bedding, shoeing, or shelter, etc.*—Nothing in the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year nineteen hundred and seven, or any other Act, shall hereafter be held or construed so as to deprive officers of the Army, wherever on duty in the military service of the United States, of forage, bedding, shoeing, or shelter for their authorized number of horses, or of any means of transportation or maintenance therefor for which provision is made by the terms of this Act. *Act of Mar. 2, 1907 (34 Stat. 1166).*

560. *Same—Not to be deprived of when officer is separated from through nature of his military service.*—Hereafter, when an officer is separated from his authorized number of owned horses through the nature of the military service upon which employed, they shall not be deprived of forage, bedding, shelter, shoeing, or medicines therefor, because of such separation. *Act of Mar. 23, 1910 (36 Stat. 252).*

561. *Same—Transportation may be furnished for from point of purchase to point of officer's station.*—Hereafter transportation may be furnished for the owned horses of an officer, not exceeding the number authorized by law, from point of purchase to his station, when he would have been entitled to and did not have his authorized number of owned horses shipped upon his last change of station, and when the cost of shipment does not exceed that from his old to his new station. *Act of Mar. 23, 1910 (36 Stat. 255).*

562. *Extra-duty pay, rates.*—When soldiers are detailed for employment as artificers or laborers in the construction of permanent military works, public roads, or other constant labor of not less than ten days' duration, they shall receive, in addition to their regular pay, the following compensation: [Fifty cents per day for mechanics, artisans, school-teachers and clerks at Army, division, and

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department headquarters, and thirty-five cents per day for other clerks, teamsters, laborers, and others.] This allowance of extra pay shall not apply to the troops of the Ordnance Department.[1] *Sec. 1287, R. S., as amended by acts of July 5, 1884 (23 Stat. 110), and Mar 3, 1885 (id., 359).*

563. *Same.*—Extra-duty pay hereafter shall be at the rate of fifty cents per day for mechanics, artisans, school-teachers, and clerks at Army, division, and department headquarters, and thirty-five cents per day for other clerks, teamsters, laborers, and others.[2] *Acts of July 5, 1884 (23 Stat. 110); Mar. 3, 1885 (id., 359).*

564. *Same—Extra pay not to be paid to soldier receiving.*—Extra pay * * * shall not be paid to any enlisted man who receives extra-duty pay under existing laws or army regulations. *Act of Mar. 2, 1907 (34 Stat. 1066).*

565. *Extra-duty, details to be in writing.*—Working parties of soldiers shall be detailed for employment as artificers or laborers, in the construction of permanent military works or public roads, or in other constant labor only upon the written order of a commanding officer, when such detail is for ten or more days. *Sec. 1235, R. S.*

566. *Same—Details in field only with consent of commanding officer.*—Details to special service from forces in the field shall be made only with the consent of the commanding officer of the forces. *Sec. 1236, R. S.*

567. Repealed. Prohibition against extra-duty pay in time of war repealed by Act of May 11, 1908 (35 Stat. 110), amending and re-enacting Section 6, Act of April 26, 1898. See opinion of this office of May 16, 1914, 72-200; 52-140.

568. *Same—Not entitled to while receiving the 20 per centum increase.*—Enlisted men receiving or entitled to the twenty per centum increased pay herein authorized shall not be entitled to or re-

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[1] This section does not include company clerks. (47 Ct. Cls., 286.) For regulations governing working parties and extra-duty pay see pars. 163-177, A. R., 1913.

[2] Enlisted men of the several staff departments are not entitled to extra-duty pay for services rendered in the department to which they belong. To entitle them to such compensation they must be detailed by competent orders and must have performed duty in another department than that in which they are enlisted. Under existing orders enlisted men of the Ordnance Department are entitled to extra-duty pay when performing duty in the Quartermaster's Department. (Circular II, A. G. O., 1886; I, id., 1887, and par. 172, A. R., 1913.)

Clerical services at Army, division, and department headquarters have, since the act of Jly 29, 1886 (24 Stat. 167), been performed by a corps of general-service clerks and messengers. By the act of August 6, 1894, this force ceased to exist as a part of the enlisted strength of the Army.

The act of March 15, 1898 (30 Stat. 323), and prior acts of appropriation fix the sum that may be expended for the pay of extra-duty men at $200,000 per annum; they also contain the requirement that "no payment of extra-duty pay shall be made at any greater rate per day than is fixed by law for the class of persons employed and the work done therein."

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ceive any additional increased compensation for what is known as extra or special duty. *Act of May 26, 1900 (31 Stat. 211).*

569. *Civilian employees, restriction on employment.*—The number of and total sum paid for civilian employees in the Quartermaster's Department, including those paid from the funds appropriated for regular supplies, incidental expenses, barracks and quarters, army transportation, clothing, camp and garrison equipage, shall be limited to the actual requirements of the service, and no employee paid therefrom shall receive a salary of more than one hundred and fifty dollars per month, except upon the approval of the Secretary of War.[1] *Act of Mar. 2, 1901 (31 Stat. 906).*

570. *Same.*—That the number of and total sum paid for civilian employees in the Quartermaster Corps, shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than $150 per month, except upon the approval of the Secretary of War. *Act of Mar. 2, 1913 (37 Stat. 714).*

571. *Clothing, President to prescribe uniform.*—The President may prescribe the uniform of the Army and quantity and kind of clothing which shall be issued annually to the troops of the United States.[2] *Sec. 1296, R. S.*

572. *Same—Gratuitous issue of.*—The Secretary of War may, on the recommendation of the Surgeon-General, order gratuitous issues of clothing to soldiers who have had contagious diseases, and to hospital attendants who have nursed them, to replace any articles of

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[1] The act of March 3, 1885 (23 Stat. 359), restricted the number of civilian employees in this Department to 1,000; the act of February 12, 1895 (28 id., 661), restricted the payments for the services of civilian employees to $1,000,000, and provided that no employee should receive as salary more than $150 per month without the specific authority of law. (See p. 18, Bulletin 7, W. D., 1913, for act of Mar. 2, 1913.)

The amount to be expended for the payment of civilian employees was fixed at $1,600,000 by the act of March 3, 1883 (22 Stat. 459); at $1,500,000 by the acts of July 5, 1884 (23 Stat. 111), March 3, 1885 (23 Stat. 360), and June 30, 1886 (24 Stat. 98); at $1,300,000 by the acts of February 9, 1887 (24 Stat. 399), September 22, 1888 (25 Stat. 486), March 2, 1889 (25 Stat. 830), June 13, 1890 (26 Stat. 154), and February 24, 1891 (26 Stat. 776); at $1,200,000 by the acts of July 16, 1892 (27 Stat. 180), and February 27, 1893 (27 Stat. 484); at $1,100,000 by the act of August 6, 1894 (28 Stat. 240), and at $1,000,000 by the acts of February 12, 1895 (28 Stat. 661), March 16, 1896 (29 Stat. 66), March 2, 1897 (id., 614), and March 15, 1898 (30 id., 323); by the acts of June 7, 1898 (30 id., 433), March 3, 1899 (id., 1350), and February 24, 1900 (31 id., 32), the restrictions imposed in the statutes above referred to were suspended, in the discretion of the Secretary of War or subject to the further order of Congress, until June 30, 1901.

For provision replacing civilian employees of the Quartermaster Corps with master electricians, first-class sergeants, sergeants, corporals, first-class privates, and privates, see paragraph 505, ante.

[2] Under authority conferred by this section the President directed that campaign badges with ribbons be issued as articles of uniform to officers and enlisted men in the service. (See G. O. No. 4, War Dept., 1905, as amended by G. O. 129, War Dept., 1908. See, also, Circular No. 82, War Dept., 1908, and G. O. Nos. 96 and 97, War Dept., 1909. For decision of Judge-Advocate-General relative to campaign badges forming a portion of the prescribed uniform, etc., see Dig. Op. J. A. G., 1912, p. 668.

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their clothing destroyed by order of the proper medical officers to prevent contagion.[1] *Sec. 1298, R. S.*

573. *Same—Quarterly returns of.*—Every officer who receives clothing or camp equipage for the use of his command, or for issue to the troops, shall render to the Quartermaster-General, at the expiration of each regular quarter of the year, quarterly returns of such supplies, according to the forms which may be prescribed, accompanied by the requisite vouchers for any issues which shall have been made.[2] *Sec. 1221, R. S., as amended by Act of Mar. 29, 1894 (28 Stat. 47).*

574. *Same—Allowance of.*—The money value of all clothing overdrawn by the soldier beyond his allowance shall be charged against him, every six months, on the muster roll of his company, or on his final statements if sooner discharged, and he shall receive pay for such articles of clothing as have not been issued to him in any year, or which may be due to him at the time of his discharge, according to the annual estimated value thereof. The amount due him for clothing, when he draws less than his allowance, shall not be paid to him until his final discharge from the service.[3] *Sec. 1302, R. S.*

575. *Same—Balance payable at discharge.*—The amounts of deposits and clothing balances accumulating to the soldier's credit under sections thirteen hundred and two and thirteen hundred and

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[1] See act of June 30, 1902 (32 Stat. 517), and subsequent Army appropriation acts providing for indemnity to officers and men of the Army for clothing and bedding, and so forth, destroyed since April 22, 1898, by order of medical officers of the Army for sanitary reasons. For regulations governing gratuitous issues of clothing see paragraphs 1172, 1173, and 1455, A. R., 1913.

The act of April 27, 1914 (Pub. No. 91, 38 Stat. —), and prior Army appropriation acts for a number of years, provide "for a suit of citizen's outer clothing, to cost not exceeding $10, to be issued upon release from confinement under a court-martial sentence involving dishonorable discharge."

Where the clothing of certain enlisted men of volunteers was destroyed near Santiago, Cuba, in 1898, by order of the proper military authority, on account of having been exposed to contagion, and replaced by new clothing which was charged to the enlisted men receiving it on their clothing accounts, it was decided by the Comptroller of the Treasury, November 28, 1900, that the issue was proper under the circumstances of the case, and that the charges therefor in the clothing accounts were erroneous and should be canceled. (Circular No. 51, A. G. O., 1900.)

[2] For regulations providing that tables showing the price of clothing and equipage for the Army, the allowance of clothing in kind to each soldier for each year of his enlistment, and his clothing money allowance for each year, month, and day, also the allowance of equipage to officers and enlisted men, will be published in circulars from the office of the Chief of the Quartermaster Corps; and as to estimates for and issues of clothing, etc., see paragraphs 1146–1173, A. R., 1913.

[3] For regulations respecting clothing accounts, see paragraphs 1157–1166 and 1169, Army Regulations, 1913.

The Quartermaster Corps is authorized to pay from the appropriation for clothing and equipage a sum not exceeding $1.50 for the laundry work of each recruit who has no funds of his own at recruiting stations, recruit depots, and recruit posts. The expenditure will be charged on the clothing account of the recruit and so noted on his descriptive and assignment card. (Par. 1169, A. R., 1913.)

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five shall, when payable to him upon his discharge, be paid out of the appropriations for "pay of the Army" for the then current fiscal year. Sergeants of ordnance shall receive the same allowance of clothing as other sergeants in like staff departments. *Sec. 1308, R. S., as amended by Act of July 16, 1892 (27 Stat. 178).*

576. *Same—To be paid out of appropriation for pay of Army for the then current fiscal year.*—Clothing balances accumulating to the soldier's credit under section thirteen hundred and two shall, when payable to him upon his discharge, be paid out of the appropriation for pay of the Army for the then current fiscal year. *Act of June 12, 1906 (34 Stat., 246).*

(This paragraph amends section 1308 of the Revised Statutes.)

577. *Same—Altering.*—It shall be lawful for the commanding officer of each regiment, whenever it may be necessary, to cause the coats, vests, and overalls or breeches which may from time to time be issued to and for his regiment to be altered and new made, so as to better to fit them to the persons respectively for whose use they shall be delivered; and for defraying the expense of such alterations, to cause to be deducted and applied out of the pay of such persons a sum or sums not exceeding twenty-five cents for each coat, eight cents for each vest and for each pair of overalls or breeches. *Sec. 1220, R. S.*

578. *Same—Limit of cost.*—Hereafter the regimental price fixed for altering and fitting soldiers' clothing shall not exceed the cost of making the same at the clothing depot.[1] *Act of Mar. 2, 1889 (25 Stat. 831).*

579. (*None.*)

SUBSISTENCE DEPARTMENT.

580. *Organization.*—The Subsistence Department shall consist of one Commissary-General of Subsistence with rank of brigadier-general, three assistant commissaries-general with the rank of colonel, four deputy commissaries-general with the rank of lieutenant-colonel, nine commissaries with the rank of major, twenty-seven commissaries with the rank of captain, mounted, the number of commissary-sergeants now authorized by law, who shall hereafter be known as post commissary-sergeants.[2] *Sec. 1140, R. S., as amended by sec. 17, act of Feb. 2, 1901 (31 Stat. 752).*

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[1] See paragraph 1262, public property, for provisions relative to the sale, barter, exchange, pledge, loan or gift of clothing. See under chapter on Articles of War, the seventeenth Article of War, as to punishment of soldier who sells or through neglect loses or spoils his clothing, etc.

[2] For consolidation of the Quartermaster's Subsistence, and Pay Department, see paragraph 499, ante.

For provision that when the first vacancy in the grade of brigadier general in the Quartermaster Corps, except a vacancy caused by the expiration of a limited term of appointment, shall hereafter occur that vacancy shall not be

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531. *Same—Promotions, details.*—So long as there remain any officers holding permanent appointments in the * * * Subsistence Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments.[1] *Sec. 26, id., 755.*

532. *Same—Details.*—When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps.[2] *Id.*

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filled, but the office in which the vacancy occurs shall immediately cease and determine. (See paragraph 502, ante, sec. 3, act of Aug. 24, 1912 (37 Stat. 591).

For provision as to the number of officers in the grades of colonel, lieutenant colonel, major, and captain in the Quartermaster Corps, see paragraph 497, ante.

Section 17 of the act of February 2, 1901 (31 Stat. 752), contained the requirement that "all vacancies in the grades of colonel, lieutenant-colonel, and major, created or caused by this act, shall be filled by promotion, according to seniority, as now prescribed by law;" the same enactment also contained the proviso that "to fill vacancies in the grade of captain created by this act, the President is authorized to appoint officers of volunteers commissioned in the Subsistence Department since April 21, 1898."

Section 2 of the act of July 7, 1898 (30 Stat. 715), authorized the Subsistence Department of the volunteer service to be increased "during the present war and not to exceed one year thereafter, eight majors and twelve captains for the discharge of such subsistence duties as may be assigned to them by the Secretary of War, to be nominated and, by and with the advice and consent of the Senate, to be appointed by the President."

The same statute contained the requirement that "during the existence of the present war, and for not exceeding one year thereafter, every commissary of subsistence, of whatever rank, who shall be assigned to the duty of purchasing and shipping subsistence supplies at important depots, shall have the rank next above that held by him and not above colonel, but the number so assigned shall only be such as may be found necessary, not exceeding twelve; also that the two commissaries of subsistence who may be detailed as assistants to the Commissary-General of Subsistence, shall have the rank of colonel: *Provided* That when any such officer is relieved from said duty, his temporary rank, pay and emoluments shall cease, and he shall return to his lineal rank in the Department."

These statutes were repealed by section 11, act of March 2, 1899 (30 Stat. 979). For the volunteer subsistence staff, see the act of March 2, 1899 (30 id., 979). See, also, the Act of Apr. 25, 1914 (Pub. No. 90, 38 Stat. —), to provide for raising the volunteer forces of the United States in time of actual or threatened war.

[1] For provision governing filling of vacancies in the Quartermaster Corps, and providing that when the vacancy occurs in a grade not above that of colonel it shall be filled, if possible, by the promotion of an officer who would have been entitled to promotion to that particular vacancy if the consolidation of the departments had not occurred, see paragraph 495, ante.

[2] Section 17 of the act of February 2, 1901, contained a provision excepting vacancies caused by that enactment from the operation of this section. Such vacancies are filled by the President under his constitutional power to appoint as modified by the acts of August 6, 1894 (28 Stat. 234), February 2, 1901 (sec. 17), and the act of March 3, 1901.

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583. *Same—Details, grade.*—Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe.[1] *Id.*

POST COMMISSARY-SERGEANTS.[2]

584. *Same—Post commissary-sergeants.*—The Secretary of War is authorized to select from the sergeants of the line of the Army who shall have faithfully served therein five years, three years of which in the grade of noncommissioned officers, as many commissary-sergeants as the service may require, not to exceed one for each military post or place of deposit of subsistence supplies, whose duty it shall be to receive and preserve the subsistence supplies at the posts, under the direction of the proper officers of the Subsistence Department, and under such regulations as shall be prescribed by the Secretary of War. The commissary-sergeants hereby authorized shall be subject to the rules and articles of war, and shall receive for their services the same pay and allowances as ordnance-sergeants.[3] *Sec. 1142, R. S.*

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[1] For regulations respecting details to the staff see the articles so entitled in the chapter relating to the staff departments.

Civil employees.—The employment of civilians in the Subsistence Department is regulated by the annual acts of appropriation. The amount to be expended for such services was fixed at $105.000 in the acts of March 3, 1883, July 5, 1884, March 3, 1885, and June 30, 1886; at $110,000 by the acts of February 9, 1887, September 22, 1888, March 2, 1889, June 13, 1890, February 24, 1891, July 16, 1892, and February 27, 1893, and at $100,000 by the acts of August 6, 1894, February 12, 1895, and March 16, 1896.

For provision replacing civilian employees of the Quartermaster Corps with master electricians, first-class sergeants, sergeants, corporals, first-class privates, and privates of the Quartermaster Corps, see paragraph 505, ante.

[2] For provision that post commissary sergeants shall hereafter be known as quartermaster sergeants of the Quartermaster Corps, see paragraph 496, ante.

[3] For regimental commissary-sergeants of cavalry, see section 2, act of February 2, 1901 (31 Stat. 748); for regimental commissary-sergeants of infantry, see section 10 of the same enactment. The act of June 30, 1882 (22 Stat. 123), authorizes the detail of one commissary-sergeant to act as assistant to the commissary of cadets at the Military Academy. By General Orders No. 17, A. G. O., of February 16, 1900, the number of post commissary-sergeants was fixed at 165; by General Orders No. 59, A. G. O., of May 3, 1900, the number was increased to 200. General Orders No. 1, A. G. O., of 1900, contains the requirement that "at military posts and stations and in the field the regimental commissaries and regimental commissary-sergeants of cavalry and infantry regiments will perform the necessary work of their respective offices in the subsistence department at the stations of the headquarters of their regiments, and no commissary-sergeants of the general staff will be assigned to posts at which there is a regimental headquarters, except under unusual conditions."

Section 1142, Revised Statutes, provides for the selection of commissary sergeants from among the sergeants of the line who have served faithfully therein for five years, three of which shall have been in the grade of noncommissioned officer. The act of July 5, 1884 (23 Stat. 109), provides for the appointment of post quartermaster sergeants upon the recommendation of the Quartermaster General, the same to be selected by examination from among the most competent enlisted men of the Army having at least four years' service, and whose character and education shall be such as to fit them to take charge of public property and to act as clerks and assistants to post and other quartermasters. Commissary sergeants were afterwards by law designated as post commissary

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585. *Same—Increase in number of.*—Two hundred post commissary-sergeants, at four hundred and eight dollars each, eighty-one thousand six hundred dollars. *Act of Apr. 23, 1904 (33 Stat. 261).*

586. *Duties to make purchases and issues.*[1]—It shall be the duty of the officers of the Subsistence Department, under the direction of the Secretary of War, to purchase and issue to the Army such supplies as enter into the composition of the ration. *Sec. 1141, R. S.*

SUBSISTENCE STORES.

587. *Same—Sales to officers and enlisted men.*—The officers of the Subsistence Department shall procure and keep for sale to officers and enlisted men at cost prices, for cash or on credit, such articles as may from time to time be designated by the inspectors-general of the Army. An account of all sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General.[2] *Sec. 1144, R. S.*

588. *Same—Sale to officers and enlisted men of Navy and Marine Corps.*—That the officers and the enlisted men of the Navy and the Marine Corps shall be permitted to purchase subsistence supplies at the same price as is charged the officers and the enlisted men of the

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sergeants and included in the Subsistence Department, and post quartermaster sergeants were by law incorporated into the Quartermaster's Department. Section 3 of the Army appropriation act of August 24, 1912 (37 Stat. 591), consolidates the Quartermaster's, Subsistence, and Pay Departments of the Army into a single corps, to be known as the Quartermaster Corps, and changes the designations of post commissary sergeants and post quartermaster sergeants to quartermaster sergeants. It provides also that the duties now required by law to be performed by officers of said several departments shall hereafter be performed by such officers of the Quartermaster Corps as the Secretary of War may designate for that purpose. *Held*, that the consolidation of said departments into a single corps and the changing of the designation of said sergeants to that of quartermaster sergeant did not repeal the requirements regarding the appointment of said sergeants, respectively, and that in filling the position of quartermaster sergeant in the consolidated corps the requirements of both of said statutes with respect to the qualifications and methods of selection should be observed, adopting the higher qualifications and observing the more restricted field of selection when the two statutes contain different provisions upon the subject. (Bulletin No. 1, Dig. Opins., J. A. G., Jan. 20, 1913.)

[1] For provision that such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay Departments shall hereafter be performed by such officer or officers of the Quartermaster Corps as the Secretary of War may designate for the purpose, see paragraph 500, ante.

For provision that regimental, battalion, and squadron commissary sergeants shall, in the discretion of the Secretary of War, be required to perform any duties that noncommissioned officers or pay clerks of the Quartermaster Corps may properly be required to perform, see paragraph 496, ante.

For definition of subsistence stores in bulk, and regulations governing authorized issues and sales of same, see paragraphs 1194–1201, A. R., 1913.

For general provisions respecting the procurement of supplies, see the chapter entitled contracts and purchases.

[2] For provisions that the purchase of all supplies, except in cases of emergency or where it is impracticable to secure competition, shall only be made after advertisement, etc., see chapter on contracts and purchases, paragraph —, post.

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Army; and the officers and the enlisted men of the Army shall be permitted to purchase subsistence supplies from the Navy and Marine Corps at the same price as is charged the officers and the enlisted men of the Navy and Marine Corps. *Act of Apr. 27, 1914 (38 Stat. 361).*

589. *Same—Sales of exceptional articles.*—Hereafter exceptional articles of subsistence stores for officers and enlisted men, which are to be paid for by them, regardless of condition upon arrival at posts, may, under regulations to be prescribed by the Secretary of War, be obtained by open purchase without advertising. *Act of Feb. 12, 1895 (28 Stat. 658).*

590. *Same—Issues to seamen and marines.*—The officers of the Subsistence Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in cooperation with the land troops, and during the time such detachment is so acting or proceeding to act, furnish rations to the officers, seamen, and marines of the same. *Sec. 1143, R. S.*

591. *Same—Purchasing officers not to trade in articles of subsistence.*—No officer belonging to the Subsistence Department, or doing the duty of a subsistence officer, shall be concerned, directly or indirectly, in the purchase or sale of any article entering into the composition of the ration allowed to troops in the service of the United States, or of any article designated by the inspectors-general of the Army, and furnished for sale to officers and enlisted men at cost prices, or of tobacco furnished for sale to enlisted men, except on account of the United States; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business connected with the duties of his office, other than that which may be allowed by law. *Sec. 1150, R. S.*

DUTIES.

592. *Same—May keep, at their own risk, in their personal possession, restricted amounts for disbursement.*—Hereafter officers intrusted with the disbursement of funds for the subsistence of the Army are hereby authorized to keep, at their own risk, in their personal possession for disbursement, such restricted amounts of subsistence funds for facilitating payments of small amounts to public creditors as shall from time to time be authorized by the Secretary of War. *Act of Mar. 2, 1907 (34 Stat. 1166).*

593. *Ration—President to prescribe components.*—The President is hereby authorized to prescribe the kinds and quantities of the component articles of the army ration, and to direct the issue of substitutive equivalent articles in place of any such components when-

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ever, in his opinion, economy and due regard to the health and comfort of the troops may so require.[1] *Sec. 40, Act of Feb. 2, 1901 (31 Stat. 758).*

594. *Same—Special, for soldiers recovering from ill health, etc.*—For difference between the cost of the ration at twenty-five cents and the cost of rations differing in whole or in part from the ordinary ration, to be issued to enlisted men in camp in the United States during periods of recovery from low conditions of health consequent upon service in unhealthy regions or in debilitating climates (to be expended only under special authority of the Secretary of War); and for ice to organizations of enlisted men stationed at such places as the Secretary of War may determine; in all, seven million dollars, to be expended under the direction of the Secretary of War, and accounted for as "Subsistence of the Army," and for that purpose to constitute one fund.[2] *Act of Apr. 23, 1904 (33 Stat. 268).*

595. *Same—Emergency, when issued, to be in addition to regular.*—Hereafter the emergency ration prescribed for use on emergent occasions shall, when issued, be furnished in addition to the regular ration under such regulations as may be prescribed by the Secretary of War. *Act of Mar. 2, 1907 (34 Stat. 1165).*

596. *Same—Enlisted men to receive per day.*—Enlisted men shall be entitled to receive one ration daily.[3] *Sec. 1293, R. S.*

597. *Same—No enlisted man to receive more than one per day.*—Hereafter no enlisted man shall be entitled to more than one ration daily.[4] *Act of July 16, 1892 (27 Stat. 178).*

598. *Same—Hospital matrons, members of female nurse corps, and nurses employed in post and regimental hospitals, one.*—Hospital

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[1] This enactment replaces the requirement of section 1146, Revised Statutes, which authorized the President to "make such alterations in the component parts of the ration as a due regard to the health and comfort of the Army and economy may require."

See paragraph 1205, Army Regulations, 1913, for the kinds and quantities of articles composing the Army ration and the substitutive equivalent articles which may be issued in place of such components. The tables show the garrison ration, the field ration, and the travel ration.

[2] On the subject of rations, see General Orders 57, War Department, 1910.

[3] *Issues to civilians.*—For regulations relative to issue of rations to civilian employees, see section 5, paragraph 733, and paragraphs 1211 and 1213, A. R., 1913.

Private persons not connected with the Army are not entitled to be subsisted at the expense of the United States, either while in quarantine hospitals or otherwise. (5 Comp. Dec., 191.)

A civilian employee of the Army engaged to accompany a scientific expedition at a salary of $125 per month is not entitled to subsistence, but, like a commissioned officer, must subsist himself. (Herendeen *v.* U. S., 28 Ct. Cls., 348.)

[4] Under General Orders No. 73, A. G. O., of 1879, an officer of the Army to whom a sum of money has been advanced for supplying enlisted men with liquid coffee for the estimated number of days' travel at the rate of 21 cents per day each while traveling, is authorized to turn over to the company commanders for the benefit of the company funds any balance of such sum remaining unexpended at the end of the travel. (6 Comp. Dec., 369.)

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matrons and the nurses employed in post or regimental hospitals [and members of the female nurse corps] shall be entitled to receive one ration daily. *Sec. 1295, R. S., as amended by sec. 19, Act of Feb. 2, 1901 (31 Stat. 753).*

599. *Same—President may authorize issuance of to Indians at military posts.*—The President is authorized to cause such rations as he deems proper, and as can be spared from the army provisions without injury to the service, to be issued under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations, and a special account of these issues shall be kept and rendered.[1] *Sec. 2110, R. S.*

600. *Same—Of sugar and coffee, when issued in kind, to be issued weekly.*—The ration of sugar and coffee where issued in kind, shall, when the convenience of the service permits, be issued weekly. *Sec. 1148, R. S.*

601. *Same—May be commuted to extract of coffee.*—The Secretary of War may commute the ration of coffee and sugar for the extract of coffee combined with milk and sugar, if he shall believe such commutation to be conducive to the health and comfort of the Army, and not to be more expensive to the Government than the present ration; provided the same shall be acceptable to the men. *Sec. 1147, R. S.*

602. *Same—Commutation of.*—For each ration of sugar and coffee not issued, nor commuted for the extract of coffee combined with milk and sugar, enlisted men shall be paid in money.[2] *Sec. 1294, R. S.*

603. *Same—To be made at cost.*—Hereafter all sales of subsistence supplies to officers and enlisted men shall be made at cost price only;

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[1] Former editions of the Army Regulations provided that small quantities of food (articles of the ration) may, on the order of the commanding officer, be issued to Indians visiting a military post, but the present regulations provide that supplies, stores, and property of any kind procured out of Army appropriations will not be transferred, in any way or under any circumstances, for the use of Indians except under authority first obtained from the Secretary of War.

[2] Commutation in the military or naval service is money paid in substitution of something to which an officer, soldier, or sailor is entitled. Commutation, being regulated by statutes and regulations, can not be allowed by inferior authority. The principle which governs the commutation of rations in lieu of subsistence is that commutation will not be allowed where subsistence in kind is provided by the Government. (Jaekle *v.* U. S., 28 Ct. Cls., 133.)

For regulations governing the commutation of rations, see pars. 1223–1238, A. R., 1913.

A claim for commutation of rations on furlough can not be allowed without the production of the furlough issued, or other satisfactory evidence that payment has not been made. The burden of proof rests upon the claimant to establish the validity of his claim by something more than his unsupported statements. (1 Comp. Dec., 513.)

A soldier who has been granted a furlough to expire upon the arrival of his regiment in the United States, is entitled to commutation of rations until he receives notice of its arrival and for a time thereafer sufficient to enable him to join it. (5 Comp. Dec., 941.)

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and the cost price of each article shall be understood, in all cases of such sales, to be the invoice price of the last lot of that article received by the officer making the sale prior to the first day of the month in which the sale is made.[1] *Act of July 5, 1884 (23 Stat. 108).*

604. *Same—To another bureau or department.*—Hereafter when under the Army Regulations subsistence supplies are furnished to another bureau of the War Department, or to another executive department of the Government or employees thereof, payment therefor shall be made in cash by the proper disbursing officer of the bureau, office, or department concerned, or by the employee to whom the sale is made. When the transaction is between two bureaus of the War Department the price to be charged shall be the contract or invoice price of the supplies. When the transaction is between the Subsistence Department and another executive department of the Government or employees thereof, the price to be charged shall include the contract or invoice price and ten per centum additional to cover wastage in transit, and the cost of transportation.[2] *Act of Mar. 3, 1911 (36 Stat. 1047).*

605. *Same—Of rations to officers in field.*—Commissioned officers of the Army, serving in the field, may purchase rations for their own use, from any commissary of subsistence, on credit, at cost prices; and the amounts due for such purchases shall be reported monthly to the Paymaster-General.[3] *Sec. 1145, R. S.*

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[1] Under the act of March 3, 1875 (18 Stat. 410), the proceeds of all sales of subsistence supplies are exempt from being covered into the Treasury, and are immediately available for the purchase of fresh supplies. (3 Dig. 2d Comp. Dec. par. 1259.)

Under the act of March 3, 1875 (18 Stat. 410), the proceeds of all sales of subsistence supplies, being exempt from being covered into the Treasury, revert to the appropriation "Subsistence of the Army," out of which they were originally expended, and are applicable to the purpose for which they are appropriated by law, namely, the purchase of fresh supplies only during the fiscal year for which the appropriation to which they revert is available, for which purpose they are immediately available without the intervention of a repay warrant. (Id.)

The subsistence supplies contemplated by the provision of the act of March 3, 1875 (18 Stat. 410), declaring the proceeds of all sales of such supplies immediately available for the purchase of fresh supplies, comprise not only the supplies denominated "subsistence stores," but also the necessary means for handling, preserving, issuing, selling, and accounting for these supplies, as tools, scales, measures, utensils, stationery, safes, office furniture, etc. (Id. 1336.)

[2] There is no general statute governing the transfer or sale of Government property from one department to another. However, see pars. 619 and 671, A. R., 1913, covering the transfer of War Department property, and par. 907, Dig. Ops. J. A. G., 1912, and 17 Ops., Atty. Gen. 480, to the effect that "the transfer of public property from one bureau or department to another *is not regarded as a sale.*"

[3] The acts of June 23, 1879, and May 4, 1880, contained the requirement that 10 per cent of the cost price should be added to the cost of all stores (except tobacco) sold to officers and enlisted men, to cover wastage, transportation, and other incidental charges (21 Stat. 32, 111). This provision was repealed by the act of July 5, 1884, above cited. To a civilian employed with the Army at a remote place, where food can not otherwise be procured, stores will be sold for cash, in limited quantities, for his own use, at invoice or contract prices. (Par. 1245, A. R., 1913.) The amounts due for such sales to be deducted from the next payment to the officer or enlisted man. (See pars. 692 and 725, post.)

For statutory regulation of the purchase of exceptional articles of subsistence see the act of February 12, 1895 (28 Stat. 658). (Par. 589, ante.)

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606. *Same—Of tobacco to enlisted men.*—Tobacco shall be furnished to the enlisted men by the commissaries of subsistences, at cost prices, exclusive of the cost of transportation, in such quantities as they may require, not exceeding sixteen ounces per month. *Sec. 1149, R. S.*

607. *Same—To be immediately available.*—So much of the appropriation for subsistence of the Army as may be necessary may be applied to the purchase of subsistence stores for sale to officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations and the proceeds of all sales of subsistence supplies shall hereafter be exempt from being covered into the Treasury and shall be immediately available for the purchase of fresh supplies.[1] *Act of Mar. 3, 1875 (18 Stat. 410).*

608. *Same—Statement of proceeds not to be reported to the Secretary of Treasury.*—That hereafter the provisions of section five of the act of June thirtieth, nineteen hundred and six[2] (Thirty-fourth Statutes, page seven hundred and sixty-three), shall not be construed to apply to the Subsistence Department. *Act of Aug. 24, 1912 (37 Stat. 579).*

609. *Same—Proceeds of sales of, disposition of.*—That hereafter all moneys arising from sales of subsistence supplies or stores, au-

[1] Under the act of March 3, 1875 (18 Stat. 410), the proceeds of all sales of subsistence supplies are exempt from being covered into the Treasury, and are immediately available for the purchase of fresh supplies. (3 Dig. 2d Comp. Dec., par. 1259.)

Under the act of March 3, 1875 (18 Stat. 410), the proceeds of all sales of subsistence supplies, being exempt from being covered into the Treasury, revert to the appropriation "Subsistence of the Army," out of which they were originally expended, and are applicable to the purpose for which they are appropriated by law, namely, the purchase of fresh supplies only during the fiscal year for which the appropriation to which they revert is available, for which purpose they are immediately available without the intervention of a repay warrant. (Id.)

The subsistence supplies contemplated by the provision of the act of March 3, 1875 (18 Stat. 410), declaring the proceeds of all sales of such supplies immediately available for the purchase of fresh supplies, comprise not only the supplies denominated "subsistence stores," but also the necessary means for handling, preserving, issuing, selling, and accounting for these supplies, as tools, scales, measures, utensils, stationery, safes, office furniture, etc. (Id. 1336.)

[2] These provisions are as follows: Hereafter the Secretary of the Treasury shall require, and it shall be the duty of the head of each executive department or other Government establishment to furnish him, within 30 days after the close of each fiscal year, a statement of all money arising from proceeds of public property of any kind or from any source other than the Postal Service, received by said head of department of other Government establishment during the previous fiscal year for or on account of the public service, or in any other manner in the discharge of his official duties other than as salary or compensation, which was not paid into the General Treasury of the United States, together with a detailed account of all payments, if any, made from such funds during such year. All such statements, together with a similar statement applying to the Treasury Department, shall be transmitted by the Secretary of the Treasury to Congress at the beginning of each regular session. Sec. 5, act of June 30, 1906 (34 Stat. 763).

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thorized by law and regulations, shall be covered into the Treasury to the credit of the proper appropriation and shall remain available throughout the fiscal year following that in which the sales were effected, for the purposes of that appropriation from which such supplies or stores were authorized to be supplied at the time of the sales. *Act of Apr. 27, 1914 (38 Stat. 361).*

610. *Line officers shall superintend cooking for enlisted men.*—The line officers of the Army shall superintend the cooking done for the enlisted men.[1] *Sec. 1234, R. S.*

611. *Commutation of rations to enlisted men on furlough, etc.*—For the payment of the regulation allowances for commutation of rations in lieu of rations: To enlisted men on furlough; to ordnance-seregeants on duty at ungarrisoned posts; to enlisted men and male and female nurses stationed at places where rations in kind can not be economically issued; to enlisted men traveling on detached duty when it is impracticable to carry rations of any kind; to enlisted men selected to contest for places or prizes in department and army rifle competitions while traveling to and from places of contests; and to male and female nurses on leaves of absence, to be expended under the direction of the Secretary of War. *Act of Mar. 2, 1901 (31 Stat. 904).*

612. *Same—For members of female nurse corps, etc.*—For payment of commutation of rations in lieu of the regular established ration for members of the Nurse Corps (female) while on duty in hospital, and for enlisted men, applicants for enlistment held under observation, and general prisoners sick therein, at the rate of thirty cents per ration (except that at the General Hospital at Fort Bayard, New Mexico, fifty cents per ration is authorized for enlisted patients in said hospital) to be paid to the surgeon in charge, * * * dollars. *Act of Mar. 2, 1907 (34 Stat. 1166).*

(See General Orders 57, War Department, 1910.)

THE PAY DEPARTMENT.

613. *Organization.*—The Pay Department shall consist of one Paymaster-General with the rank of brigadier-general, three assistant

[1] Section 1233, Revised Statutes, which required cooks to be detailed, in turn, from the privates of each company was repealed by the act of June 29, 1879 (20 Stat., ch. 24, p. 276). (See G. O. 94, A. G. O., 1898.) The act of July 7, 1898 (30 Stat. 721), authorized the enlistment of one cook in each company in the military establishment. Such cook was to have the rank and receive the pay of a corporal. This statute was replaced by the act of March 2, 1899 (30 Stat. 977), which authorized two cooks to be enlisted in each troop of cavalry, battery of artillery, and company of infantry of the Regular and Volunteer establishments. By section 9 of the act of March 2, 1899, the cooks so enlisted were to have the pay of sergeants of infantry. That medical officers shall unite with officers of the line in superintending the cooking done by enlisted men. (See par. 743, post.)

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paymasters-general with the rank of colonel, four deputy paymasters-general with the rank of lieutenant-colonel, twenty paymasters with the rank of major, and twenty-five paymasters with the rank of captain mounted.[1] *Sec. 21, Act of Feb. 2, 1901 (31 Stat. 754).*

614. *Same—Additional.*—When volunteers or militia are called into the service of the United States, and the officers of the Paymaster's Department are not deemed by the President sufficient for the punctual payment of the troops, he may appoint, by and with the advice and consent of the Senate, and add to said corps as many paymasters, to be called additional paymasters with the rank of major, not exceeding one for every two regiments of volunteers or militia, as he may deem necessary. *Sec. 1184, R. S.*

615. *Same—Service to be temporary.*—Additional paymasters shall be retained in service only so long as they may be required for the payment of volunteers and militia, as provided herein. *Sec. 1185, R. S.*

616. *Same—Promotions and transfers.*—So long as there remain any officers holding permanent appointments in the * * * Pay Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions, or to the periods for which the officers so promoted shall hold their appointments.[2] *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

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[1] Section 21 of the act of February 2, 1901 (31 Stat. 754), contains the requirement that "all vacancies in the grade of colonel and lieutenant-colonel created or caused by this section shall be filled by promotion according to seniority, as now prescribed by law, and no more appointments to the grade of major and paymaster shall be made until the number of majors and paymasters is reduced below twenty: *And provided*, That persons who have served in the Volunteer Army since April twenty-first, eighteen hundred and ninety-eight, as additional paymasters may be appointed to positions in the grade of captain created by this section. So long as there remain surplus majors an equal number of vacancies shall be held in the grade of captain, so that the total number of paymasters authorized by this section shall not be exceeded at any time." For requirements of law in respect to appointments in this department as it existed prior to the approval of the act of February 2, 1901, see section 7 of the act of March 2, 1899 (30 Stat. 979). For a statutory extension of the field of selection, as indicated in section 21 of the act of February 2, 1901, see the act of March 2, 1901, par. 373, ante.

For provision that when the first vacancy in the grade of brigadier-general in the Quartermaster Corps, except a vacancy caused by the expiration of a limited term of appointment, shall hereafter occur that vacancy shall not be filled, but the office in which the vacancy occurs shall immediately cease and determine, see paragraph 502, ante. (Sec. 3, Act of Aug. 24, 1912, 37 Stat. 591.)

For provision as to the number of officers in the grades of colonel, lieutenant colonel, major, and captain in the Quartermaster Corps, see paragraph 497, ante.

[2] For provision governing filling of vacancies in the Quartermaster Corps, and providing that when the vacancy occurs in a grade not above that of colonel it shall be filled, if possible, by the promotion of an officer who would have been

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617. *Same—Details.*—When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in these departments or corps.[1] *Id.*

618. *Same.*—Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe.[2] *Id.*

619. *Same—Duties of Paymaster-General.*—The Paymaster-General shall perform the duties of his office under the direction of the President.[3] *Sec. 1186, R. S.*

620. *Same—Deputy paymasters-general.*—The deputy paymasters-general shall, in addition to paying troops, superintend the payment of armies in the field.[4] *Sec. 1187, R. S.*

621. *Same—Paymasters.*—The paymasters and additional paymasters shall pay the regular troops, and shall pay all other troops in the service of the United States, when required to do so by order of President. *Sec. 1188, R. S.*

622. *Same—To disburse all money for pay of Army.*—All the money hereinbefore appropriated for pay of the Army and miscellaneous, except the appropriation for mileage of officers and contract surgeons when authorized by law, shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall constitute one fund.[5] *Act of Mar. 3, 1911 (36 Stat. 1044).*

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entitled to promotion to that particular vacancy if the consolidation of the departments had never occurred, see paragraph 495, ante.

For statutory regulations respecting examinations for promotion, see the title examinations for promotion, in the chapter entitled The Staff Departments.

[1] For provisions relative to filling vacancies in the Quartermaster Corps by detail, see paragraphs 495, 496, and 497, ante.

[2] For statutory regulations respecting details to the staff, see the title Details to the staff in the chapter entitled The Staff Departments.

[3] For provision that such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay Departments shall hereafter be performed by such officer or officers of the Quatermaster Corps as the Secretary of War may designate for the purpose, see paragraph 500, ante.

[4] Paymasters of the Army are the financial agents of the Government. and their disbursements, represented by vouchers, are examined and scrutinized by the Comptroller, whose duty it is finally to determine whether or not any particular disbursement shall be credited to the officer. In charging an officer, or refusing him credit for erroneous disbursements, the question of proper care invariably enters into consideration in arriving at a decision. The right to determine that question is a most essential feature of the functions of the Comptroller. (3 Dig. 2d Comp. Dec., par. 8.)

For provision that such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay Departments shall hereafter be performed by such officer or officers of the Quartermaster Corps, as the Secretary of War may designate for the purpose, see paragraph 500, ante.

[5] For provision that such duty or duties as are now required by law to be performed by any officer or officers of the Quartermaster's, Subsistence, or Pay

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623. *Same—Examination of accounts of paymasters.*—Hereafter all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit, and the Secretary of War may hereafter authorize the assignment to duty in the office of the Paymaster-General, not to exceed five paymasters' clerks, now authorized by law. *Act of Mar. 2, 1905 (33 Stat. 832).*

624. *Same—Right to command.*—Officers of the Pay Department shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.[1] *Sec. 1183 R. S.*

625. *Same—Arrear shall not exceed two months.*—The Army shall be paid in such manner that the arrears shall at no time exceed two months, unless circumstances shall render further arrears unavoidable.[2] *Sec. 1189, R. S..*

626. *Same—Rule for division of time and computation of.*—Hereafter, where the compensation of any person in the military service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established: Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one-thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the thirtieth day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for

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Departments shall hereafter be performed by such officer or officers of the Quartermaster Corps, as the Secretary of War may designate for the purpose, see paragraph 500, ante.

[1] An officer of the Pay or Medical Department can not exercise command, except in his own department; but by virtue of his commission he may command all enlisted men like other commissioned officers. (Par. 18, A. R., 1913.)

[2] Troops will be paid every month unless circumstances prevent, in which case the quartermaster charged with the payment will immediately report the facts through his department quartermaster to the Chief of the Quartermaster Corps. (Par. 1315, A. R., 1913.)

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one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited.[1] *Act of June 12, 1906 (34 Stat. 248).*

627. *Same—By check.*—Hereafter the Secretary of War is also authorized to arrange for the payment of the enlisted men serving at posts or places where no paymaster is on duty by check or by currency, to be sent to them by mail or express, at the expense and risk of the United States.[2] *Act of Feb. 27, 1893 (27 Stat. 479).*

628. *Same—To militia from appropriations for militia.*—Hereafter all payments to the militia under the provisions of section fifteen of the Act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes. *Act of Apr. 23, 1904 (33 Stat. 267).*

629. *Same—Authorization for.*—Paymasters and additional paymasters shall be allowed a capable noncommissioned officer or private as clerk. When suitable noncommissioned officers or privates can not be procured from the line of the Army, they are authorized, by and with the approbation of the Secretary of War, to employ citizens as clerks, at a salary of fourteen hundred dollars a year.[3] *Sec. 1190, R. S., as amended by the act of June 30, 1882 (22 Stat. 118).*

630. *Same—Pay same as Navy paymasters' clerks.*—Hereafter the pay and allowances of Army paymasters' clerks shall be the same as provided by law for Navy paymasters' clerks[4] on shore duty, and they

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[1] The act of June 30, 1906 (34 Stats., 763), contains a similar provision to the above, substituting for the words "any person in the military service of the United States," the words "any person in the service of the United States."

[2] For regulations for the method of making payments to enlisted men, see paragraphs 1315–1346, A. R., 1913.

A paymaster of the Army who alleges that he inclosed certain sums of money in a package transmitted by him to an officer for the payment of troops, which sums were not found in the package when received, the seals being unbroken, is not entitled to credit therefor. (6 Comp. Dec., 940.)

A soldier of a company which performed duty usually performed by engineer soldiers, but which was regularly mustered and paid as a company of infantry, is not entitled to pay as an engineer soldier. (Id., 25.)

[3] For travel allowances of paymasters' clerks see paragraph 631, post. Salaries of clerks to paymasters are now graded according to length of service. See next paragraph for rates of pay for periods of service.

[4] The rates of pay of Army paymasters' clerks under the act of March 3, 1911, are as follows: First three years of service, $1,125 per annum; second three years of service, $1,250 per annum; third three years of service, $1,625 per annum; fourth three years of service, $1,625 per annum; after 12 years of service, $2,000.

On application of a pay clerk serving at a post where there were troops for assignment of quarters, *Held*, that he is entitled when on duty at a post with troops to the same number of rooms as quarters as a second lieutenant of the Army, and to such quarters as may be assigned to commissioned officers, but that he has no right of selection under paragraph 1042, Army Regulations of 1910, of quarters occupied by any commissioned officer. (Bulletin No. 4, Dig. Opins. J. A. G., Feb. 1, 1913.)

On application for a decision as to whether Army pay clerks are officers of the Army within the meaning of the statutes and regulations so as to entitle them to purchase ordnance stores for their own use. *Held*, that a pay clerk

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shall also be entitled to the same right of retirement with the same retired pay as is now allowed Navy paymasters' clerks: *Provided*, That Army paymasters' clerks shall be subject to the rules and articles of war. *Act of Mar. 3, 1911 (36 Stat. 1044).*

631. *Same—Mileage same as that for officers of Army.*—Hereafter Army paymasters' clerks and the expert accountant, Inspector General's Department, shall receive mileage at the same rates and under the same conditions as is provided by law for officers of the Army. *Act of Aug. 24, 1912 (37 Stat. 575).*

632. *Same—Age for retirement same as that for officers of Army.*—Hereafter the age limit for the retirement of Army paymasters' clerks shall be the same as the age limit for the retirement of commissioned officers of the Army.[1] *Id.*

633. *Same—No further appointments to be made.*—That hereafter no further appointments of pay clerks shall be made. *Act of Mar. 2, 1913 (37 Stat. 708).*

634. *Same—Subject to the rules and articles of war.*—That Army paymasters' clerks shall be subject to the Rules and Articles of War. *Act of Mar. 3, 1911 (36 Stat. 1044).*

635. *Rates of pay.*—The officers of the Army shall be entitled to the pay[2] herein stated after their respective designations:[3]

The general, thirteen thousand five hundred dollars a year.[4]

Lieutenant-general, eleven thousand dollars a year.[5]

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in the Army occupies a military status and must be deemed an officer of the Army in the sense that he has a military status and is not an enlisted man or cadet, although not a commissioned officer; and as there is nothing in the statutes or regulations providing for the sale of ordnance stores to officers for their own use in the service which would limit the sale to commissioned officers, pay clerks are entitled to purchase ordnance stores for their own use in the military service. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

[1] An examining board found a pay clerk of the Army incapacitated for active service, said incapacity having originated prior to the passage of the act of March 3, 1911 (36 Stat. 1044), giving such clerks the same pay and allowances as Navy paymasters' clerks on shore duty, together with the same right to retirement and retired pay as is allowed such Navy paymasters' clerks. *Held*, that the effect of said act of March 3, 1911, is to recognize the service of Army paymasters' clerks prior to March 3, 1911, as service within the meaning of sections 1453 and 1454, Revised Statutes, and that the retirement of the clerk may be based upon disability incurred while engaged in such prior service. (Bulletin No. 1, Dig. Opins. J. A. G., Jan. 20, 1913.)

[2] Pay is the monthly pecuniary compensation of officers and soldiers of the Army, as fixed by sections 1261, 1280, etc., Revised Statutes. It is quite distinct from "allowances." (X Opin. Att. Gen., 285.) The right to pay begins and ends with the period of legal service. Except by special authority of Congress an officer or soldier can not be paid for military service rendered before appointment, enlistment, or muster in. See the chapter entitled Commissioned officers.)

[3] For longevity pay, see paragraph 652, post.

[4] This office has ceased to exist as a grade of rank in the military establishment.

[5] The act of March 2, 1907 (34 Stat. 1160), provided that when the office of lieutenant-general shall become vacant, it shall not thereafter be filled, but said office shall cease and determine; but that nothing in the provision shall affect the retired list.

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Major-general, eight thousand dollars a year.

Brigadier-general, six thousand dollars a year.

Colonel, four thousand dollars a year.

Lieutenant-colonel, three thousand five hundred dollars a year.

Major, three thousand dollars a year.

Captain, two thousand four hundred dollars a year.

First lieutenant, two thousand dollars a year.

Chaplain.[1]

Second lieutenant, one thousand seven hundred dollars a year.

Aid to major-general, two hundred dollars a year, in addition to pay of his rank.

Aid to brigadier-general, one hundred and fifty dollars a year, in addition to pay of his rank.

Ordnance storekeeper at Springfield Armory, two thousand five hundred dollars a year.

All other storekeepers, two thousand dollars a year. *Sec. 1261, R. S., as amended by Act of May 11, 1908 (35 Stat. 108).*

636. *Same—Militia and Volunteers.*—All officers and enlisted men of the Volunteer Army, and of the militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers and enlisted men of corresponding grades in the Regular Army.[2] *Sec. 12, Act of Apr. 22, 1898 (30 Stat. 363).*

637. *Same—Officers below grade of major who provide suitable mounts.*—Hereafter the United States shall furnish mounts and horse equipments for all officers of the Army below the grade of major required to be mounted, but in case any officer below the grade of major required to be mounted provides himself with suit-

[1] By section 12 of the act of February 2, 1901 (31 Stat. 750), the President was authorized to appoint chaplains in the Army, with the rank, pay, and allowances of captain of infantry.

By the act of April 21, 1904 (33 Stat. 226), chaplains who have had not less than ten years' service, in the grade of captain, and who have been commended as worthy of special distinction for exceptional efficiency, may be promoted to be chaplains with the grade, pay, and allowances of major; that remaining chaplains shall have the grade, pay, and allowances of captain, mounted, after they shall have completed seven years' service; and that all persons hereafter appointed as chaplains shall have the grade, pay, and allowances of first lieutenant, mounted, until they shall have completed seven years of service. (See 10 Comp. Dec., 765.)

[2] Section 1292 of the Revised Statutes contains the requirement that "in all matters relating to the pay and allowances of officers and soldiers of the Army of the United States, the same rules and regulations shall apply to the Regular Army and to volunteer forces mustered into the service of the United States for a limited period."

The date on which a volunteer officer, appointed by the President, formally accepts his appointment should be considered as the date of the commencement of his military service. No such officer should be recognized as having been in the military service of the United States, under his appointment, because of any service that may have been rendered by him prior to his formal acceptance of that appointment. (Decision Sec. War, June 28, 1899. Circular 32, A. G. O., 1899.)

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able mounts at his own expense, he shall receive an addition to his pay of one hundred and fifty dollars per annum if he provides one mount, and two hundred dollars per annum if he provides two mounts.[1] *Act of May 11, 1908 (35 Stat. 108).*

638. *Same—No increase on account of brevet rank.*—Brevets conferred upon commissioned officers shall not entitle them to any increase of pay. *Sec. 1264, R. S.*

639. *Same—Increased for exercising higher command.*—In time of war every officer serving with troops operating against an enemy who shall exercise, under assignment in orders issued by competent authority, a command above that pertaining to his grade shall be entitled to receive the pay and allowances of the grade appropriate to the command so exercised: *Provided*, That a rate of pay exceeding that of a brigadier-general shall not be paid in any case by reason of such assignment.[2] *Sec. 7, Act of Apr. 26, 1898 (30 Stat. 365).*

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[1] For regulations in regard to mounted pay, see paragraphs 1272–1274, A. R., 1913.

[2] Under section 7 of the act of Congress approved April 26, 1898, an officer is not entitled to the pay and allowances of the grade appropriate to a command exercised by him above that pertaining to his grade except when "serving with troops operating against an enemy" and exercising the command of the higher grade "under assignment in orders issued by competent authority." It has been held by the Secretary of War that troops serving within the limits of the United States at a time when there is no foreign army within said limits are not operating against an enemy, notwithstanding the existence of war conditions. For the purpose of restricting assignments to command under this section to "competent authority," it has also been decided that such authority can be exercised only by the Secretary of War, or by the commanding general of an army "operating against an enemy." (Circular 18, A. G. O., 1898. See also G. O. 86, A. G. O., 1898.)

The command prescribed by law for an officer of the Army must be held to be the appropriate command of that grade, and such command is not subject to change by Executive order, or regulation, except as provided by law. (5 Comp. Dec., 354.)

An officer of the Army who, under assignment in orders issued by his superior officer, exercises a command above that pertaining to his grade exercises such command under competent authority within the meaning of section 7 of the act of April 26, 1898. (Id., 354.)

Under section 7 of the act of April 26, 1898, an officer of the Army serving in time of war with troops operating against an enemy, who is required by the Army Regulations, upon a specified contingency, to exercise a command above that pertaining to his grade, must be regarded as exercising such "command under assignment in orders issued by competent authority," and is entitled to the pay of the higher grade. (Id., 639.)

The office of an officer of the Army and his rank are not necessarily identical. (Wood *v.* U. S., 107 U. S., 414; 5 Comp. Dec., 280.)

A captain in the Army while performing duty as chief quartermaster does not exercise a command within the meaning of section 7 of the act of April 26, 1898, and is not entitled to increased pay for exercising a command above that pertaining to his grade. (5 Comp. Dec., 137.) A judge advocate who is assigned by a corps commander to act as judge advocate on his staff does not thereby acquire any higher rank and is not entitled to any addtional pay. (Id., 168.)

A major of infantry who, on the assignment of the lieutenant colonel to the command of the regiment, was assigned to the command of a battalion was not assigned to a command above that pertaining to his grade, and is not entitled to the increase of pay provided by the act of April 26, 1898, for exercising a command above that pertaining to his grade. (Id., 862.)

The fact that a major of the Army was for a time assigned to the command of a post garrisoned by two batteries of artillery does not make such a com-

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640. *Same—Restrictions as to period covered by higher command.*—For additional pay for increased rank when in command by competent authority, * * * dollars: *Provided*, That no part of this sum shall be used for pay of officers assigned to higher command than their rank in the Army, unless such service shall be continuous for a period of not less than three months. *Act of May 26, 1900 (31 Stat. 211).*

641. *Same—Authority for accounting officers to remove stoppages in settlement of claims for.*—The accounting officers of the Treasury, in the settlement of claims, shall not stop against the amount found due the payments for exercise of higher command which were made between April twenty-sixth, eighteen hundred and ninety-eight, and March eighteenth, nineteen hundred and seven, in accordance with regulations and decisions then existing: *Provided further*, That where disallowances or stoppages on account of pay received for exercise of higher command between said dates have been made in the settlement of claims, the Auditor for the War Department is hereby authorized and directed to reopen said settlements and to credit the claimants the full amount due on their claims: *And provided further*, That nothing herein contained shall be construed as authorizing the accounting officers of the Treasury to allow any claim for increase of pay for the exercise of a higher command between the dates of April twenty-sixth, eighteen hundred and ninety-eight, and March eighteenth, nineteen hundred and seven, which may now be pending or hereafter presented, except in accordance with the decision of March eighteenth, nineteen hundred and seven, of the United States Supreme Court in the case of Donn C. Mitchell. *Act of Mar. 3, 1911 (36 Stat. 1039).*

642. *Same—Increase for foreign service.*—Hereafter the pay proper of all commissioned officers and enlisted men serving beyond the limits of the States comprising the Union and Territories of the United States contiguous thereto shall be increased ten per centum

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mand the appropriate command of a major, and a captain assigned to such a command is not entitled to the pay of a major. (Id., 891.)

There is no law authorizing the allowance of additional pay to an enlisted man for performing the duties of a commissioned officer, and a claim for such pay can not be allowed. (4 Comp. Dec., 120.)

A second lieutenant of the Army who exercised the command of a first lieutenant did not "exercise a command above that pertaining to his grade," within the meaning of the act of April 26, 1898, and he is not entitled to the pay of the higher grade. (6 Comp. Dec., 905.)

Where an officer of the Army exercised a higher command and, under section 7 of the act of April 26, 1898, is entitled to the pay and allowances of the grade appropriate to the command so exercised, and, under section 1262, Revised Statutes, is also entitled to increased pay for length of service, such increased pay to be computed on the pay of the grade appropriate to such higher command. (Id., 710.)

Held that section 7, act of April 26, 1898 (30 Stat. 365), extends to a first lieutenant assigned to command another company than his own. (Walker's case, 43 Ct. Cls., 1. See also par. 641, post.)

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for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto.[1] *Act of June 30, 1902 (32 Stat. 512).*

643. *Same.*—Increase of pay for service beyond the limits of the States comprising the Union, and the territories of the United States contiguous thereto, shall be as now provided by law.[2] *Act of May 11, 1908 (35 Stat. 110).*

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[1] Congress, by act of June 12, 1906 (34 Stat. 274), appropriating for the 20 per centum additional pay for enlisted men and 10 per centum additional pay for commissioned officers serving beyond the limits of the States comprising the Union and the Territories of the United States contiguous thereto, excepted from the appropriation service in Porto Rico and the Hawaiian Islands; while the act of March 2, 1907 (34 Stat. 1164), contained a like exception. The act of May 11, 1908 (35 Stat. 110), provided that increase of pay for foreign service "shall be as now provided by law."

The case of United States *v.* Vulte (233 U. S., 509) involved service as commissioned officer in the Marine Corps in Porto Rico subsequent to the act of May 11, 1908, the claimant alleging that the clause "shall be as now provided by law" referred to the act of June 30, 1902, authorizing additional pay for foreign service. The Supreme Court of the United States (233 U. S., 509), in affirming the decision of the Court of Claims (47 Ct. Cls., 324), held as follows:

"A statute which fixes the annual salary of a public officer at a designated sum without limitation as to time is not abrogated or suspended by subsequent enactments which merely appropriate a less amount for that officer for particular years and which contain no words expressly, or by clear implication, modifying or repealing the previous law.

"The provision in the appropriation acts of 1906 and 1907 excepting Hawaii and Porto Rico from the operation of the provision for additional pay for officers in foreign service is not to be construed as prevailing over the explicit provisions of the act of June 30, 1902, providing for such additional pay including those places, and the salary provided by law of officers on foreign service referred to in the act of May 11, 1908, is that fixed by the act of June 30, 1902."

The 10 per cent increase on pay proper being allowed by the act only to officers serving in the places named therein, I am of the opinion that an officer on duty in one of the places named in the act, who is relieved from duty and given a sick leave or an ordinary leave, is not entitled to the 10 per cent increase in computing his pay after the date on which he leaves the place where the increased pay for service therein is authorized by law. (6 Comp. Dec., 948.)

[2] An officer of the Army was directed, as a member of a cavalry board, to proceed to Berlin, Germany, and take station at that place "for the purpose of observing and studying the cavalry branch of the German Army," and also of the armies of other countries enumerated. The board was further directed to "make such journeys between Berlin, Germany, and points in the countries herein named as may be necessary." In accordance with these orders the officer left Berlin and traveled to various points in the countries named in his orders. Upon the completion of his duties at one of said points he received an order that upon the completion of his duties abroad pertaining to the cavalry board he should repair to Washington, D. C., for temporary duty. He complied with this order by returning directly to the United States from the point last named without returning to his station in Berlin.

Held, that the duties performed by the officer at the various places visited were incidental to his assignment to his station at Berlin, so that his station remained at the latter place until he left for the United States, and that the officer should be considered as having been assigned to and as having retained station at Berlin within the meaning of the act of March 2, 1901 (31 Stat. 903), during the period in question and not as having been in a traveling status.

Held, therefore, that he was entitled to the increased pay for foreign service until his arrival in the United States.

(Comp. Geo. E. Downey, Sept. 10, 1913. Bulletin No. 31, Dig. Opins. J. A. G., Oct. 10, 1913.)

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644. *Same—Not to apply to Canal Zone, Panama, Hawaii, or Porto Rico.*—Hereafter the laws allowing increase of pay to officers and enlisted men for foreign service shall not apply to service in the Canal Zone, Panama, or Hawaii or Porto Rico. *Act of Aug. 24, 1912 (37 Stat. 576).*

645. *Same—Applies to transport service in the Philippine Archipelago.*—Officers and enlisted men who have served on army transports in the Philippine Archipelago at any time since May twenty-sixth, nineteen hundred, under the control and orders of the commanding general, Philippines Division, or who may hereafter so serve, shall be entitled to receive the same rate of pay as is provided by law for officers and enlisted men serving at shore stations beyond the limits of the United States. *Act of May 11, 1908 (35 Stat. 114).*

646. *Same—Additional pay for acting commissaries repealed.*—So much of section twelve hundred and sixty-one of the Revised Statutes as pertains to additional pay for acting commissaries be, and the same is hereby, repealed. *Act of Aug. 24, 1912 (37 Stat. 574).*

647. *Assignment or transfer of pay accounts.*—Hereafter all commissioned officers of the Army may transfer or assign their pay accounts, when due and payable, under such regulations and restrictions as the Secretary of War may prescribe. *Act of Mar. 2, 1907 (34 Stat. 1159).*

648. *Same—Payment by check to be full acquittance.*—That hereafter section thirty-six hundred and twenty, Revised Statutes, as amended by the Act of Congress approved February twenty-seventh, eighteen hundred and seventy-seven, shall not be construed as precluding officers of the Quartermaster Corps from drawing checks in favor of the person or institution designated by indorsement made on his monthly pay account by any officer of the Army if the pay account has been deposited for payment on maturity in conformity with such regulations as the Secretary of War may prescribe: *Provided further*, That payment by the United States of a check on the indorsement of the indorsee specified on the pay account shall be a full acquittance for the amount due on the pay account. *Act of Mar. 2, 1913 (37 Stat. 710).*

649. *Advances of pay.*—The President may * * * direct such advances as he may deem necessary and proper to persons in the naval and military service employed on distant stations where the discharge of the pay and emoluments to which they may be entitled can not be regularly effected.[1] *Sec. 3648, R. S.*

[1]An advance of public money made by a paymaster of the Army to an officer ordered to a distant station, when made by direction of the President, as provided by section 3648 of the Revised Statutes, to provide for the pay of such officer for a future period, is not a payment for services for the correctness of which the paymaster is held responsible, but is an advance of public money to the officer in question, for which he, and not the paymaster, is accountable to the United States. (4 Comp. Dec., 250.)

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650. *Advances to troops embarking for service in Philippines.*—Troops about to embark for service in the Philippine Islands may, in the discretion of the Secretary of War, be paid one month's wages in advance prior to embarkation. *Act of July 7, 1898 (30 Stat. 721).*

651. *Allowances, restrictions as to.*—No allowances shall be made to officers in addition to their pay except as hereinafter provided.[1] *Sec. 1269, R. S.*

652. *Same—Ten per centum increase for each term of five years of service.*—There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.[2] *Sec. 1262, R. S.*

653. *Same—Total increase not to exceed 40 per centum of yearly pay.*—The total amount for such increase for length of service shall in no case exceed forty per centum on the yearly pay of the grade as provided by law. *Sec. 1263, R. S.*

654. *Same—Maximum for colonel, lieutenant-colonel, and major.*—In no case shall the pay of a colonel exceed five thousand dollars a year; the pay of a lieutenant-colonel exceed four thousand five hundred dollars a year, or the pay of a major exceed four thousand dollars a year. *Act of May 11, 1908 (35 Stat. 108).*

655. *Same—Service as officer in volunteers or enlisted man in armies to be counted.*—On and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement.[3] *Sec. 7, Act of June 18, 1878 (20 Stat. 150).*

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[1] Pay is the fixed and direct amount given by law; allowances or emoluments are indirect or contingent remuneration; both are compensation. (Sherburne *v.* U. S., 16 Ct. Cls., 491. See also note 2 to paragraph 635, ante.)

[2] Longevity pay is founded upon the equivalent of increased judgment and capacity acquired by the experience of continued service. Brown *v.* U. S., 18 Ct. Cls., 545. Acts authorizing longevity pay are remedial statutes, and officers are entitled to a liberal interpretation of them, the language used being given as broad a meaning as Congress may be presumed to have intended. (Hendee *v.* U. S., 22 Ct. Cls., 134; 19 id., 153.)

[3] An officer once in actual service, under color of office, is entitled to have the time credited to him in the computation of longevity pay. (Gould *v.* U. S., 19 Ct. Cls., 593.) The time of actual service is to be credited to an officer in the computation of his longevity pay, without regard to a defect in his title to the office. (Palen *v.* U. S., 19 id., 389.) Service as chaplain prior to the act of March 2, 1867 (14 Stat., 423), can be reckoned in computing longevity pay, chaplains being in the military service prior to that date. (U. S. *v.* LaTourette, 151 U. S., 572.) Service as a contract surgeon can not be reckoned in such computation. (Byrnes *v.* U. S., 26 Ct. Cls., 302; Hendee *v.* U. S., 124 U. S., 309.) Before the passing of the act of July 28, 1866, as well as afterwards, the corps of

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656. *Same—Service in Navy to be counted.*—The actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay. *Act of Feb. 24, 1881 (21 Stat. 346).*

657. *Same—Service of cadet subsequent to act not to be counted.*—Hereafter the service of a cadet who may hereafter be appointed to the United States Military Academy or to the Naval Academy shall not be counted in computing for any purpose the length of service of any officer of the Army. *Sec. 6, Act of Aug. 24, 1912 (37 Stat. 594).*

658. *Same—Receive 75 per centum of pay of rank.*—Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they are retired.[1] *Sec. 1274, R. S.*

659. *Same—Not to receive longevity pay.*—Hereafter, except in case of officers retired on account of wounds received in battle, no officer now on the retired list shall be allowed or paid any further increase of longevity pay, and officers hereafter retired, except as herein provided, shall not be allowed or paid any further increase of longevity pay above that which had accrued at date of their retirement. *Act of Mar. 2, 1903 (32 Stat. 932).*

660. *Same—Wholly retired.*—Officers wholly retired from the service shall be entitled to receive, upon their retirement, one year's pay and allowances of the highest rank held by them, whether by staff or regimental commission, at the time of their retirement.[2] *Sec. 1275, R. S.*

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cadets of the Military Academy was a part of the Army of the United States, and a person serving as a cadet was serving in the Army; and the time during which a person has served as a cadet was, therefore, actual time of service by him in the line of the Army. (Morton *v.* U. S., 112 U. S., 1, 7.)

[1] An officer of the Army who has been retired is entitled to the pay provided for a retired officer only, even though he may not have been relieved from active duty. (5 Comp. Dec., 53.) Retired officers being in the military service of the Government, the increased pay of 10 per cent for each five years' service applies to the years so passed in the service after retirement as well as before. (U. S. *v.* Tyler, 105 U. S., 244, 246, and 16 Ct. Cls., 223.)

An officer on the retired list to whom the "full pay and allowances of brigadier-general" has been granted by Congress is not entitled to an allowance of forage. (XVII Opin. Att. Gen., 390.) Where, by a private act of Congress, an ex-officer is placed upon the retired list and the act directs that his retired pay shall be due and payable to him from the date of the passage of the act, his pay will begin at the date of the act and not at the date of his acceptance. (1 Comp. Dec., 172.)

The pay of retired officers is a matter within the control of Congress, and so is their rank. (Wood *v.* U. S., 15 Ct. Cls., 151, and 107 U. S., 414.) Officers retired from active service are retired "upon the actual rank held by them at the date of retirement." (Remey *v.* U. S., 33 Ct. Cls., 218.)

[2] The provision of section 1275, Revised Statutes, that an officer wholly retired shall receive, upon retirement, one year's pay and allowances, entitles such an officer to receive a sum equal to the total of one year's pay and all the pecuniary allowances of an officer of his rank. And *held* that the fact that an officer, at the time of being wholly retired, was under a sentence of suspension from rank and pay, did not affect his right to receive such full sum upon the retirement. (Dig. Opin. J. A. G., p. 999, N. 3.)

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661. *Same—Absence on account of sickness, wounds, etc.*—Officers when absent on account of sickness[1] or wounds, or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half-pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.[2] *Sec. 1265, R. S.*

662. *Same—Leave on full pay.*—That an act approved May eighth, eighteen hundred and seventy-four, in regard to leave of absence of Army officers, be, and the same is hereby, so amended that all officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken once only in four years.[3] *Act of July 29, 1876 (19 Stat. 102).*

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[1] For requirements of the regulations respecting sick leaves see paragraph 57, A. R., 1913.

[2] Section 1265 of the Revised Statutes provides that an officer absent without leave shall forfeit all pay unless the absence is excused as unavoidable; the rule prevails whether a court-martial declares a forfeiture or not. (Dodge *v.* U. S., 33 Ct. Cls., 28.) The pay of an officer absent without leave is not absolutely forfeited, but only when it has been made to appear that the absence was not unavoidable. (Smith *v.* U. S., 23 Ct. Cls., 452.) A statement by the Adjutant-General that an officer was "absent without leave" is conclusive as to his status, and is not affected by statements made by officers of the War Department implying the belief that the officer was not responsible for his absence. (3 Dig., 2d Comp. Dec., par. 2.) The act of March 3, 1863, section 1265, Revised Statutes, provides that an officer absent without leave shall forfeit his pay. If payment has been made it may be recovered. Lapse of time does not preclude the Government from charging an officer with a payment made to him contrary to law. (Crowell *v.* U. S., 22 Ct. Cls., 69.)

[3] For regulations respecting leaves of absence see paragraphs 49–67, A. R., 1913.

Section 1265 of the Revised Statutes was replaced by the act of May 8, 1874 (18 Stat. 43), which provided that "all officers on duty west of a line drawn north and south through Omaha City and north of a line drawn east and west upon the southern boundary of Arizona shall be allowed sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the leave is taken but once in two years: *And provided further*, That the leave may be extended to three months if taken only once in three years, or four months if taken once only in four years." This statute was superseded by the act of July 29, 1876, above cited. For statutory provisions respecting leaves of absence to graduates of the Military Academy, see the chapter entitled the Military Academy.

Section 31 of the act of March 3, 1863 (12 Stat. 736), does not apply to an officer ordered to proceed to his home and there await orders, though the order was issued at his own request. An officer "absent with leave" is at liberty to go where he will; an officer ordered to a particular place, there to await orders, must remain in that place and continue as much under orders as though assigned to any ordinary military duty. (Williamson *v.* U. S., 10 Ct. Cls. 50, and 23 Wall., 411; Phisterer *v.* U. S., 11 Ct. Cls. 98, and 94 U. S., 219.)

An officer ordered home to await orders may change his place of residence, reporting the fact to the War Department. (Phisterer *v.* U. S., 12 Ct. Cls. 98.) An officer ordered home to await orders can not make his home ambulatory by simply reporting from the places where he may chance to be. (Chilson *v.* U. S., 11 Ct. Cls. 691.)

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663. *Same—Dates of commencement and termination of.*—Leaves of absence which may be granted officers of the Regular and Volunteer Army serving in Alaska or without the limits of the United States, for the purpose of returning thereto, or which may have been granted such officers for such purpose since the thirteenth day of October, eighteen hundred and ninety-eight, shall be regarded as taking effect on the dates such officers reached or may have reached the United States, respectively, and as terminating, or as having terminated, on the respective dates of their departure from the United States in returning to their commands as authorized by an order of the Secretary of War, dated October thirteenth, eighteen hundred and ninety-eight.[1] *Act of Mar. 2, 1901 (31 Stat. 902).*

664. *Same—Officers appointed from Volunteer to Regular Army entitled to accrued leave.*—Officers appointed to the Regular Army from the volunteer service, whose service has been continuous, shall, in the computation of leaves of absence after their appointment in the Regular Army, be entitled to the leave credits which accrued to them as volunteer officers where such leave credits were not availed of during their volunteer service. *Act of June 30, 1902 (32 Stat. 508).*

665. *Same—To be absent from Philippines.*—Leaves to be absent from the Philippine Islands, other than to return to the United States, which may be granted officers of the Army serving in said islands and sailing from Manila, shall be regarded as taking effect on the dates such officers reach Manila, and as terminating on the dates of their departure from Manila, in returning to their stations. *Act of Mar. 2, 1907 (34 Stat. 1171).*

666. *Same—No officer or enlisted man absent on account of disease resulting from intemperate habits or misconduct is entitled to.*—Hereafter no officer or enlisted man in active service who shall be absent from duty on account of disease resulting from his own intemperate use of drugs or alcoholic liquors or other misconduct shall receive pay for the period of such absence, the time so absent and the cause thereof to be ascertained under such procedure and regulations as may be prescribed by the Secretary of War: *Provided further,* That an enlistment shall not be regarded as complete until the soldier shall have made good any time in excess of one day lost by unauthorized absences, or on account of disease resulting from his

[1] *Pay during absence in confinement.*—Officers and enlisted men in arrest and confinement by the civil authorities will receive no pay for the time of such absence; if released without trial, or after trial and acquittal, their right to pay for the time of such absence is restored. (Par. 1371, A. R., 1913.)

The fact that an officer or soldier is under charges does not by military law deprive him of his pay, although under the application of military rules exceptions may arise to this rule. (Dodge *v.* U. S., 33 Ct. Cls., 28.)

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own intemperate use of drugs or alcoholic liquors or other misconduct, or while in confinement awaiting trial or disposition of his case if the trial results in conviction, or while in confinement under sentence.[1] *Act of Apr. 27, 1914 (38 Stat. 353).*

667. *Same—Pay forfeited during absence without leave.*—Every officer who is dropped by the President from the rolls of the Army, for absence from duty three months without leave, shall forfeit all pay due or to become due. *Sec. 1266, R. S.*

668. *Commutation of quarters, rate.*—That at places where there are no public quarters commutation therefor may be paid by the Pay Department to the officer entitled to the same at a rate not exceeding twelve dollars per month per room.[2] *Act of Mar. 2, 1907 (34 Stat. 1169).*

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[1] The Army appropriation act of August 24, 1912 (37 Stat. 572), provides that a soldier shall not receive pay from the appropriation contained in the act while he may be absent from active duty on account of disease "resulting from his own intemperate use of drugs, or alcoholic liquors, or other misconduct." A soldier was sick in hospital for one day and consequently absent from active duty by reason of injuries received in a fist fight in which he voluntarily engaged. *Held*, That the words "other misconduct" in the statute is limited by the rule of *ejusdem generis* to conduct of the same general character as that indicated by the words preceding them, to wit, "intemperate use of drugs, or alcoholic liquors" (36 Cyc., 1119), or misconduct consisting in the intemperate or improper indulgence of natural or acquired appetites; that the misconduct of the soldier in this case was not of such general character; and that no deduction should be made from his pay while absent from active duty on account thereof. (Bulletin No. 8, Dig. Opins. J. A. G., March 18, 1913.)

[2] Commutation in the military or naval service is money paid in substitution of something to which an officer, sailor, or soldier is entitled; being regulated by statutes and regulations, it can not be allowed by inferior authority. (Jaegle *v.* U. S., 28 Ct. Cls., 133.) The right of an officer of the Army to commutation of fuel and quarters springs out of the general authority of the War Department, and has been indirectly sanctioned by Congress from the origin of the Government. This usage has been so long practiced in the Army, and so often sustained by Congress in appropriations for the payment of such commutations, that the right of officers under the regulations of the Army can not now be questioned. (Whittlesey *v.* U. S., 5 Ct. Cls., 99.) Since the foregoing decision was rendered the allowance of quarters for the several grades of officers of the Army and the monthly rate of commutation therefor having been fixed by statute the practice can no longer be said to rest upon usage or upon the authority of regulations. (See acts of June 18, 1878, and June 23, 1879.)

Officers on the active list detailed as professors of colleges and engineer officers engaged upon civil works are entitled to commutation of quarters and to purchase fuel under the provisions of section 9 of the act of June 17, 1878. Such commutation in the case of an engineer officer would not be payable from the appropriation for the civil work upon which he is engaged. (See also Long *v.* U. S., 8 Ct. Cls., 398.) An officer ordered home to await orders is not entitled to commutation of quarters, such home not being a military station. (Phisterer *v.* U. S., 13 Ct. Cls., 110.) When a military officer is ordered to the headquarters of a military department to await further orders and pursuant to the order remains there, performing no duty, he is entitled to commutation of quarters. If such headquarters are in a large city where there are quarters assignable to officers on duty it is not necessary for him to demand that quarters be assigned him. (Lippitt *v.* U. S., 14 Ct. Cls., 148, and 100 U. S., 663.)

The act of June 28, 1882 (22 Stat. 118), authorized commutation of quarters to be paid to officers and enlisted men of the Signal Service serving in the arctic regions, the same in amount as though they were serving in Washington in the District of Columbia. For regulations in respect to the payment of commutation of quarters to officers see paragraphs 1299 to 1307, A. R., 1913.

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669. *Same—Officer who is member of Board of Road Commissioners living in Alaska.*—Hereafter any officer of the Army and member of said Board of Road Commissioners who is living with his family while serving as a member of said board within the limits of the Territory of Alaska, and not stationed at a military post, shall be entitled to receive a per diem commutation fixed by the board in lieu of "actual living expenses," as now provided by law; and this provision shall embrace the time during which any member of said board shall have failed in the past to receive any allowance for expense of living by reason of the decision of the Comptroller of the Treasury above referred to, to the effect that said allowance could not be made to an officer living with his family. *Act of Apr. 27, 1914 (38 Stat. 366).*

670. *Same—No claim for quarters for servants.*—No allowance shall be made for claims for quarters for servants heretofore or hereafter; and that the rate of commutation shall hereafter be twelve dollars per room per month for officers' quarters, in lieu of ten dollars, as now provided by law. *Act of June 23, 1879 (21 Stat. 31).*

671. *Same—Duty without troops.*—The Secretary of War may determine what shall constitute travel and duty without troops within the meaning of the laws governing the payment of mileage and commutation of quarters to officers of the Army.[1] *Act of Mar. 2, 1901 (31 Stat. 901).*

672. *Same—Not to lose right on account of temporary absence.*—Hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent.[2] *Act of Feb. 27, 1893 (27 Stat. 480).*

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[1] Under the authority conferred by the act of March 3, 1901, it has been decided by the Secretary of War that "officers on duty in the War Department, at army and other general headquarters, attending surgeons and other officers on duty in cities and other places where public quarters are not furnished, but where enlisted men are on duty only as guards, orderlies, clerks, and messengers, and recruiting officers at city stations are regarded as being on duty without troops within the meaning of the laws and regulations." (G. O. 43, A. G. O., 1901.)

[2] Officers of the Army acting as Indian agents at places where there are suitable quarters provided by the Government are not entitled to commutation of quarters. (4 Comp. Dec., 210.)

An officer relieved from duty at a station where he had quarters in kind and ordered to report in person for duty at a college during vacation is not entitled to commutation of quarters prior to the date on which he reports in person at the college. (4 Comp. Dec., 254.)

An officer is not entitled to reimbursement for the amount paid for quarters when serving at a post where there are public quarters to which he could have been assigned by the Quartermaster's Department. (2 Comp. Dec., 187.) Officers can not base claims to commutation of quarters on refusal or failure to occupy public quarters provided for their use. (Id., 223.)

Officers of the Army on the retired list who, upon their own application, are detailed to educational institutions, in accordance with the provisions of the act of November 3, 1893, are entitled to the full pay of their rank. (6 Comp.

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673. *Same—Military attachés, etc., entitled to.*—Hereafter the officers detailed to obtain the same [military information from abroad] shall be entitled to mileage and transportation, and also commutation of quarters while on this duty, as provided when on other duty. *Act of Feb. 27, 1893 (27 Stat. 480).*

674. *Officers to receive monthly payments*—The sums hereinbefore allowed shall be paid in monthly payments by the paymaster.[1] *Sec. 1268 R. S.*

675. *Mileage to be computed over shortest route.*—From and after the passage of this act mileage of officers of the Army shall be computed over the shortest usually traveled routes between the points named in the order, and the necessity for such travel in the military service shall be certified to by the officer issuing the order and stated in the order.[2] *Act of Mar. 3, 1883 (22 Stat. 456).*

Dec., 120.) Such officers are not entitled to commutation of quarters. (Id., 506.)

The act of May 12, 1898, which limits the compensation of contract surgeons to $150 per month, by implication prohibits the payment of commutation of quarters to contract surgeons. (6 Comp. Dec., 403.) An officer who has been relieved from duty and directed to proceed to his home to await orders is not entitled to commutation of quarters. (Id., 233.)

[1] For instructions respecting the payment of commissioned officers see paragraphs 1256 to 1274, Army Regulations of 1913.

The assignment of their pay accounts by Army officers after the same become due is authorized by paragraph 1300 of the Army Regulations of 1895, and is legal. (3 Comp. Dec., 45.)

An officer's "pay account" is not commercial paper, but, in its legal aspect, a mere receipt. (Note in this connection the opinion of the Attorney-General, in XVI Opins., 191, to the effect that an approved account or voucher issued to a contractor for an amount due him under his contract is "not in any proper sense negotiable paper.") So *held* that a bona fide assignee of an officer's pay account for a certain month, who, on receiving payment thereon from a paymaster, delivered to the latter the account with his name written on the back of same, did not thereby incur the obligation of an indorser, or render himself liable as such for the amount to the paymaster, on its being ascertained that the officer had already himself drawn his pay for that month, and that a double payment had thus been made. (Dig. Opin., J. A. G., p. 851, B 4.)

It has been held by the Comptroller of the Treasury that the allotment of any portion of the pay of a commissioned officer constituted a violation of the requirements of section 3477, Revised Statutes. (6 Comp. Dec., 319.) The statutes authorizing the allotment of pay have exclusive relation to enlisted men.

[2] Under the authority conferred by the act of March 2, 1901, it has been decided by the Secretary of War that "traveling with troops," in the sense here employed, will be regarded as covering all cases of officers included in orders for movement in whatever manner, of their appropriate commands or in orders for movement of detachments, escorts, or stores which proceed by marches or by transportation belonging to or especially hired for the purpose by the United States, the idea being that in marches the officers should move as do the troops and that where transportation is specially devoted to the movement it is sufficient for all included therein. But the term will not be regarded as covering cases of officers included in the movement by railroad, stage, or like established lines of conveyances; of detachments of less than ten armed or unarmed men, such as guards and nurses for disabled or insane officers or soldiers; recruiting parties and escorts for inspectors, paymasters, and others, or the public funds or property in their charge, or of officers traveling on troop trains or transports, but not ordered to report to the commanding officer nor on duty with the troops or command on board, and such officers are not regarded

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676. *Same—To be computed by table of distances.*—Payment and settlement of mileage accounts of officers shall be made according to distances computed over routes established, and by mileage tables prepared by the Paymaster-General of the Army under the direction of the Secretary of War. *Act of Mar. 2, 1901 (31 Stat. 901).*

677. *Same—Orders involving payment of, to state duty.*—All orders involving the payment of mileage shall state the special duty enjoined. *Act of Aug. 6, 1894 (28 Stat. 237).*

678. *Same—Rate fixed at 7 cents per mile.*—Hereafter officers, active and retired, when traveling under competent orders without troops, and retired officers who have so traveled since March third, nineteen hundred and five, shall be paid seven[1] cents per mile and no more; distances to be computed and mileage to be paid over the shortest usually traveled routes, with deduction as hereinafter provided; and payment and settlement of mileage accounts of officers shall be made according to distances and deductions computed over routes established and by mileage tables prepared by the Paymaster-

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as traveling with troops within the meaning of the laws and regulations. (G. O. 43, A. G. O., 1901.)

For act of March 2, 1901 (31 Stat. 901) authorizing the Secretary of War to determine what shall constitute travel and duty without troops within the meaning of the laws governing the payment of mileage and commutation of quarters, see paragraph 671, ante.

[1] Section 1273, Revised Statutes, fixed the allowance of mileage at 10 cents per mile, to be computed over the nearest post route and to be paid by the Pay Department. The act of June 16, 1874 (18 Stat. 72), discontinued mileage as a method or reimbursement for expenses incurred in traveling on duty, and substituted therefor the payment of actual expenses in all cases of travel under orders. This provision was repeated in the act of March 3, 1875 (18 Stat. 452). The mileage allowance was restored and fixed at the rate of 8 cents per mile by the act of July 24, 1876 (19 Stat. 97), but was not payable when actual transportation had been furnished by the Quartermaster's Department, or in a conveyance owned or chartered by the United States, or on any railroad over which the troops and supplies of the United States were entitled to be transported free of charge; the distance in each case was to be computed by the shortest usually traveled route. Section 1273 was repealed by the act of July 24, 1876, above cited. The act of March 3, 1883 (22 Stat. 456), contained the requirement that mileage should be computed over the shortest usually traveled routes between the points named in the order and that the necessity for travel should be certified to, in each case, in the order directing the journey. The act of June 30, 1886 (24 Stat. 95), fixed the rate of mileage at 4 cents per mile, and, in addition thereto, the cost of transportation actually paid, exclusive of sleeping and parlor car fares. The act of February 9, 1887 (24 Stat. 396), contains the following provision: "That in disbursing this amount the maximum sum to be allowed and paid to an officer shall be 4 cents per mile, distance to be computed over the shortest usually traveled routes, and, in addition thereto, upon the officer's certificate that it was not practicable to obtain transportation from the Quartermaster's Department the cost of the transportation actually paid by the officer over said route or routes, exclusive of sleeping or parlor car fare and transfers: *And provided further*, That when any officer so traveling shall travel in whole or in part on any railroads on which the troops and supplies of the United States are entitled to be transported free of charge he shall be allowed for himself only 4 cents per mile as a subsistence fund for every mile necessarily traveled over any such last-named railroad. All the money hereinbefore appropriated except the appropriation for mileage to officers when traveling on duty without troops when authorized by law shall be disbursed and accounted for by the Pay Department as pay of the Army, and for that purpose shall constitute one fund," which was repeated

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General of the Army under the direction of the Secretary of War. *Act of June 12, 1906 (34 Stat. 246).*

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in the acts of September 22, 1888 (25 Stat. 483), March 2, 1889 (25 Stat. 827), June 13, 1890 (26 Stat. 151), February 24, 1891 (26 Stat. 773), July 14, 1892 (27 Stat. 177), and February 27, 1893. The acts of February 12, 1895 (28 Stat. 657), and March 16, 1896 (29 id., 60), contain the same requirements. The act of March 2, 1897 (29 id., 612, 614), provided that actual transportation should be furnished by the Quartermaster's Department to officers traveling under orders, and that mileage only should be paid by the Pay Department. The act of March 15, 1898 (30 Stat. 318), contained the requirement that "the maximum sum to be allowed and paid to any officer of the Army shall be 7 cents per mile, distances to be computed by the shortest usually traveled route." By the act of March 3, 1899 (30 Stat. 1068), the foregoing requirement was made permanent. The act of March 15, 1898, also contained the proviso that "officers who, by reason of the decision of the accounting officers of the Treasury, have been compelled to pay from their own means one-half of the cost of their travel fare over railroads known as fifty per centum railroads shall be reimbursed the same by the Pay Department, and paymasters against whom disallowances have been made by the accounting officers of the Treasury, under such decision, shall have the amount so disallowed passed to their credit." For requirements of regulation in respect to travel on the public business, see paragraphs 68–75, 742, 800, and 1507, Army Regulations of 1913. (See also par. 772½, post.)

On appeal from a decision of the Auditor for the War Department disallowing, *inter alia*, a claim of an officer serving as military attaché abroad for reimbursement for the amount paid by him for the transportation of his baggage while traveling on official business on a mileage basis, *held* that mileage is an allowance in the nature of a reimbursement for the expenses of travel incurred by an officer traveling under competent orders on public business; that the mileage law (act of June 12, 1906, 34 Stat. 246) expressly provides—

"That hereafter officers * * * when traveling under competent orders without troops * * * *shall be paid 7 cents per mile and no more* * * *"; that the mileage so authorized is intended to and does cover every ordinary and reasonable expense of travel, including any cost of transportation of personal baggage, such as an officer usually traveling in a mileage status usually carries with him; that to allow the claim in question would be to give the officer more than 7 cents a mile, contrary to the provision of the statute; and that the regulations authorizing such allowance (pars. 1137 and 1153, Regulations 1910) are directly contrary to the statute and without legal force or effect. (Asst. Comp. W. W. Warwick, July 29, 1913. Bulletin No. 27, Dig. Opins. J. A. G., Aug. 11, 1913.)

Held, that the statute having limited the allowance of an officer traveling under conditions which entitle him to mileage to 7 cents per mile and no more, the payment of anything in addition for the transportation of his personal baggage while so traveling was not authorized, and that said paragraph 1137 of the Army Regulations was contrary to law and without legal effect. (Asst. Comp. W. W. Warwick, July 29, 1913. Bulletin No. 29, Dig. Opins. J. A. G., Sept. 10, 1913.)

Held, that the the term "baggage" had two significations: First, articles which a traveler requires or takes with him on a journey for his personal use or convenience and with reference to his immediate necessities or to the ultimate purposes of his journey; and, second, to the portable equipment, including tents, clothing, utensils, and other necessaries of the Army; that Congress, in appropriating for the transportation of the Army and its supplies, including transportation of the troops "and their baggage, and the cost of packing and crating" the same, had reference to the latter character of baggage, which was the only kind of baggage for which the law had made provision for shipment at public expense, except as personal baggage was included in the mileage allowance; and that there was no law which authorized the transportation at public expense of baggage as the term was used in the first sense under any circumstances outside of the mileage allowance. With this explanation the decision of the auditor was approved, but in view of the fact that payment for transportation of baggage in the personal sense had been the long-continued practice, payments made by disbursing officers not later than September 24, 1913, being otherwise correct, would be passed to their official credit. (Asst. Comp. W. W. Warwick, Sept. 19, 1913. Bulletin No. 31, Dig. Opins. J. A. G., Oct. 10, 1913.)

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679. *Same—Where station is changed while on leave of absence.*—When the station of an officer is changed while he is on leave of absence he will on joining the new station be entitled to mileage for the distance to the new station from the place where he received the order directing the change, provided the distance be no greater than from the old to the new station; but if the distance be greater he will be entitled to mileage for a distance equal to that from the old to the new station only. *Act of June 12, 1906 (34 Stat. 247).*

(This paragraph is a reenactment of similar provisions contained in the urgent deficiencies appropriation act of February 27, 1907, 34 Stat. 32.)

680. *Same—Traveling expenses in lieu of, on instruction journeys.*—For travel expenses of officers on journeys approved by the Secretary of War and made for the purpose of instruction: *Provided*, That the traveling expenses herein provided for shall be in lieu of mileage and other allowances, * * * dollars. *Act of Mar. 3, 1911 (36 Stat. 1056).*

681. *Actual expenses for contract and dental surgeons in Alaska.*—Hereafter actual expenses only, not to exceed four dollars and fifty cents per day and cost of transportation when not furnished by the Quartermasters' Department, shall be paid to the officers of the Army, contract surgeons, and dental surgeons, when traveling on duty without troops, under competent orders, within the geographical limits of the Territory of Alaska. *Act of May 11, 1908 (35 Stat. 114).*

682. *Actual expenses only for sea travel.*—For all sea travel actual expenses only shall be paid to officers, contract surgeons, contract dental surgeons, and veterinarians, to paymasters' clerks, and to the expert accountant of the Inspector-General's Department, when traveling on duty under competent orders, with or without troops, and the amount so paid shall not include any shore expenses at port of embarkation or debarkation; but for the purpose of determining allowances for all travel under orders, or for officers and enlisted men on discharge, travel in the Philippine Archipelago, the Hawaiian Archipelago, the home waters of the United States, and between the United States and Alaska shall not be regarded as sea travel and shall be paid for at the rates established by law for land travel within the boundaries of the United States. *Act of June 12, 1906 (34 Stat. 247).*

683. *Same—On discharge.*—For sea travel on discharge actual expenses only shall be paid to officers and transportation and subsistence only shall be furnished to enlisted men. *Act of Mar. 2, 1901 (31 Stat. 903).*

684. *Travel allowances on discharge, except as punishment.*—Hereafter when an officer shall be discharged from the service, except by way of punishment for an offense, he shall receive for travel

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allowances from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service four cents per mile.[1] *Id., 902.*

685. *Transportation in kind, on request.*—Officers who so desire may, upon application to the Quartermaster's Department, be furnished under their orders transportation requests for the entire journey by land, exclusive of sleeping and parlor car accommodations, or by water; and the transportation so furnished shall, if travel was performed under a mileage status, be a charge against the officer's mileage account, to be deducted at the rate of three cents per mile by the paymaster paying the account, and of the amount so deducted there shall be turned over to an authorized officer of the Quartermaster's Department three cents per mile for transportation furnished, except over any railroad which is a free or fifty per centum land-grant railroad, for the credit of the appropriation for the transportation of the Army and its supplies. *Act of June 12, 1906 (34 Stat. 246).*

686. *Travel over bond-aided roads.*—When the established route of travel shall, in whole or in part, be over the line of any railroad on which the troops and supplies of the United States are entitled to be transported free of charge, or over any fifty per centum land-grant railroad, officers traveling as herein provided for shall, for the travel over such roads, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, by the Quartermaster's Department. *Act of June 12, 1906 (34 Stat. 246), amending the act of Mar. 2, 1901 (31 Stat. 902).*

687. *Same—Deduction.*—When transportation is furnished by the Quartermaster's Department, or when the established route of travel is over any of the railroads above specified, there shall be deducted from the officer's mileage account by the paymaster paying the same three cents per mile for the distance for which transportation has

[1] An officer who voluntarily quits the military service is not entitled to travel pay. (1 Comp. Dec., 370.)

An officer whose resignation, tendered on the ground of physical disability, is accepted, becomes entitled to travel pay, provided the disability did not exist at the time of his entering the service, or was not incurred on account of his own misconduct during service. The length of service is material evidence in determining whether the disability existed prior to entry into the service. (Id.)

Under section 1289 of the Revised Statutes an officer of the Volunteer Army is entitled to travel pay from the place of his discharge to the place where he accepted his appointment, but is not entitled to mileage on his discharge. (5 Comp. Dec., 113.)

An officer or soldier who is discharged for his own convenience is not entitled to travel pay or allowances. (Id., 113.)

An officer who is ordered to proceed to his home and is discharged, to take effect at a subsequent date, is entitled to mileage, but not to travel pay. (Id., 87. See also id., 705.)

An order retiring an officer from active service in the Army, which contains no direction for him to proceed to his home, can not be regarded as an order directing him to perform the journey so as to confer a right to mileage. (4 id., 175.)

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been or should have been furnished.[1] *Act of Mar. 2, 1901 (31 Stat. 902).*

688. *Mileage, restrictions upon expenditure of appropriation for, on inspections and investigations.*—Hereafter no portion of the appropriation for mileage to officers traveling on duty without troops shall be expended for inspections or investigations, except such as are especially ordered by the Secretary of War, or such as are made by army and department commanders in visiting their commands, and those made by Inspector-General's Department in pursuance of law, army regulations, or orders issued by the Secretary of War or the Commanding General of the Army; and all orders involving the payment of mileage shall state the special duty enjoined.[2] *Act of Aug. 6, 1894 (28 Stat. 237).*

[1] The act of May 26, 1900 (31 Stat. 210), contained the following provision: "For traveling expenses and commutation of quarters for civilian physicians employed by the Surgeon-General, one thousand five hundred dollars."

[2] It is a well-established fact that persons traveling on Government business are entitled to be reimbursed for their expenses. This is done either by a mileage allowance, a fixed sum as a commutation of expenses, or an itemized statement showing actual expenses. Prior to 1874 mileage was the most usual measure of allowances. (4 Comp. Dec. 421.) Mileage is a form of reimbursement, and "public business" is the foundation on which it rests. (Perrimond *v.* U. S., 19 Ct. Cls., 509.) Allowances for travel and subsistence are payable to officers and agents of the United States only when they are employed at other places than their places of residence. (Test *v.* U. S., id., 357.) In fact, mileage is merely a commutation for traveling expenses. (U. S. *v.* Smith, 158 U. S., 350.)

The mileage allowance to an officer of the Army on the active list is fixed by law, the law in effect at the time the travel is performed and not the law in effect when the order for the travel is issued. (1 Comp. Dec., 29.)

Except in cases of emergency, the right to mileage can not be conferred by an order issued after the journey has been performed. (4 Comp. Dec., 175.) The law and regulations requiring a specific order prior to the commencement of the journey must be strictly complied with, and the officer must make the journey within a reasonable time in accordance with the order to acquire a right to mileage. (Id.)

An order to travel to a designated point, perform certain duty and return, is, in effect, two distinct orders, and the mileage allowances for each trip is fixed by the law at the time the travel in each case was commenced. (1 Comp. Dec., 29.)

It is not necessary that an order to travel should specifically designate places and routes. It may leave them to the discretion of the officer, and the subsequent approval of the Department will be conclusive upon the accounting officers. (Billings *v.* U. S., 23 Ct. Cls., 166.) If public business was an element in an officer's circuity of route, he is entitled to mileage therefor; if it was not, the Government is not answerable for the increased distance. (Du Bose *v.* U. S., 19 Ct. Cls., 514.)

Where the route is left to the discretion of the officer, his mileage should be calculated by the shortest usually traveled route, unless some good reason be shown for deviation. (Crosby *v.* U. S., 22 Ct. Cls., 13, 2 Comp. Dec., 544.)

The question as to the shortest usually traveled route between any two points is a question of fact, and to be determined by the best obtainable evidence. * * * The time required in making the journey, the rates of fare, and the fact that an officer should be absent from his post of duty for the shortest possible period are important elements in determining the shortest usually traveled route in any particular case.

Evidence should accompany the voucher on which payment is made, to establish the fact that the distance is computed by the route which, for the time and occasion, is the shortest usually traveled route. Mileage can in no case be allowed for any distance in excess of the distance actually traveled, and if the

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689. *Disbursements to be made by the Quartermaster Corps.*—All the money hereinbefore appropriated for pay of the Army and miscellaneous, except the appropriation for mileage of officers, dental surgeons, contract surgeons, veterinarians, pay clerks, and expert accountant Inspector General's Department, when authorized by law, shall be disbursed and accounted for by officers of the Quartermaster Corps as pay of the Army, and for that purpose shall constitute one fund.[1] *Act of Apr. 27, 1914 (38 Stat. 359).*

690. *Repairs to arms, etc.*—The cost of repairs or damages done to arms, equipments, or implements shall be deducted from the pay of

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distance actually traveled exceed the distance by the shortest usually traveled route, mileage can be allowed only for the distance by the shortest usually traveled route. (1 Comp. Dec., 115.)

The mileage of an officer of the Army is to be computed by the shortest usually traveled route regardless of the number of miles actually traveled, unless the orders under which he travels, or the necessities of the service (and not the mere convenience of the officer), require the use of a route longer than that usually traveled. (2 id., 544. See also 1 id., 118, 209; 4 id., 74; 5 id., 196.)

When it appears that an army officer was directed to travel on military duty and had no order to stop over, or delay on his journey, it must be presumed by the accounting officers that he was directed to go by the shortest usually traveled route, without unnecessary delay, and he will be allowed only the cost of "through limited tickets" for such travel. The accounting officers look to the officer's orders as to the necessity for delay en route, not questioning the authority of the War Department to determine whether the officer's duty requires that he shall stop over on his journey. (3 Dig. Dec., 2d Comp., par. 1426.)

The law relating to the cost of transportation contemplates that army officers traveling on duty without troops shall travel over the usually traveled routes in the mode usually adopted and by the conveyances usually employed. The exigencies of the service should be of an unusual character, not admitting of even the possibility of delay, to justify the officer in engaging the more costly transportation on fast or limited trains. (Id., 1429.)

An officer ordered home, at his own request, to await orders, is entitled to mileage from his post to his home, such a journey constituting travel under orders. (Williamson *v.* U. S., 23 Wall., 411; Phisterer *v.* U. S., 12 Ct. Cls., 98, and 94 U. S., 219.) Where an officer who has received but has not yet taken advantage of a leave of absence is ordered to convey prisoners to another post his leave is to that extent suspended, and he is entitled to mileage. (Andrews *v.* U. S., 15 Ct. Cls., 264.)

The Army Regulations provide that the expiration of an officer's leave of absence must find him at his station. His station means his permanent station, not a place to which he was temporarily ordered and at which he accepted his leave of absence. (Andrews *v.* U. S., 15 Ct. Cls., 264.) An officer's proper station can not be changed by his being ordered to perform a temporary duty while on leave of absence. (Id.) If an officer on leave of absence be ordered to temporary duty at the place where he may happen to be, and he be kept there until after his leave of absence expires and then be ordered to his proper station, he will not be entitled to mileage. (Barr *v.* U. S., 14 Ct. Cls., 272.)

An officer who voluntarily quits the military service is not entitled to travel pay. (1 Comp. Dec., 370.)

An officer whose resignation, tendered on the ground of physical disability, is accepted, becomes entitled to travel pay, provided the disability did not exist at the time of his entering the service, or was not incurred on account of his own misconduct during service. The length of service is material evidence in determining whether the disability existed prior to entry into the service. (Id.)

The expense for transportation to a point not located on a railroad incurred by an officer of the Inspector-General's Department in inspecting unserviceable river and harbor material, is properly payable from the appropriation for the river and harbor work. (3 Comp. Dec., 3.)

[1] A similar provision first appeared in the act of June 30, 1886 (24 Stat. 95), and similar provisions have occurred in subsequent acts of appropriation for the support of the Army, especially the act of May 11, 1908 (35 Stat. 115).

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any officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier. *Sec. 1303, R. S.*

691. *Deficiency in articles of military supplies.*—In case of deficiency of any article of military supplies, on final settlements of the accounts of any officer charged with the issue of the same, the value thereof shall be charged against the delinquent and deducted from his monthly pay, unless he shall show to the satisfaction of the Secretary of War, by one or more depositions setting forth the circumstances of the case, that said deficiency was not occasioned by any fault on his part. And in case of damage to any military supplies, the value of such damage shall be charged against such officer and deducted from his monthly pay, unless he shall, in like manner, show that such damage was not occasioned by any fault on his part.[1] *Sec. 1304, R. S.*

692. *Rations, etc., purchased on credit.*—The amount due from any officer for rations purchased on credit, or for any article designated by the inspectors-general of the Army and purchased on credit from commissaries of subsistence, shall be deducted from the payment made to such officer next after such purchase shall have been reported to the Paymaster-General. *Sec. 1299, R. S.*

693. *Arrearages due United States.*—No money shall be paid to any person for his compensation who is in arrears[2] to the United States until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days

[1] The power given to the Secretary of War to order a stoppage of pay against a delinquent officer is exclusive and discretionary, but is not to be asserted against an officer acting under an order which he is bound to obey, and as to which he is expressly relieved from personal liability. Such an abuse of power would not tend to preserve but to subvert military order and discipline. The refusal of the Secretary of War to stop an officer's pay is not a decision upon the merits; it will not bind the Government nor preclude the Comptroller from causing a suit to be brought against the officer; it merely determines that the officer is so far without fault that the harsh and summary remedy of stopping his pay should not be resorted to. (Smith *v.* U. S., 24 Ct. Cls., 209, 215; Billings *v.* U. S., 23 id., 166, 175.)

[2] Persons in "arrears," are only such, as having previous transactions of a pecuniary nature with the Government, are found, upon the settlement of these transactions, to be in arrears to it. (III Opin. Att. Gen., 52.) This section only applies to cases in which the party who claims compensation is liable to the United States. (Hedrick *v.* U. S., 16 Ct. Cls., 88.)

The phrase "who is in arrears to the United States," contained in the act of January 25, 1828 (sec. 1766, Revised Statutes), applies only to persons who, having had previous transactions of a pecuniary nature with the Government, are found upon the settlement of those transactions, to be in arrears. (III Opin. Att. Gen., 52.) Where an officer of the Army assigned his pay accounts in payment of certain indebtedness, which accounts the Paymaster-General declined to pay, for the reason that, on the maturity thereof, the officer was in

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thereafter, order suit to be commenced against such delinquent and his sureties.[1] *Sec. 1766, R. S.*

694. *Same—When admitted or shown by judgment of court.*—The pay of officers of the Army may be withheld under section seventeen hundred and sixty-six of the Revised Statutes on account of an indebtedness to the United States admitted or shown by the judgment of a court, but not otherwise, unless upon a special order issued according to the discretion of the Secretary of War.[2] *Act of July 16, 1892 (27 Stat. 177).*

695. *Rates of pay of master electricians, noncommissioned officers, etc.*—Hereafter the monthly pay of enlisted men of the Army during their first enlistment shall be as follows, namely: Master electricians, master signal electricians, seventy-five dollars; engineers, sixty-five dollars; sergeants first class Hospital Corps, fifty dollars; regimental sergeants-major, regimental quartermaster-sergeants, regimental commissary-sergeants, sergeants-major senior grade coast artillery, battalion sergeants-major of engineers, post quartermaster-sergeants, post commissary-sergeants, post ordnance-sergeants, battalion quartermaster-sergeants of engineers, electrician-sergeants first class, sergeants first class Signal Corps, and first sergeants, forty-five dollars; battalion sergeants-major of infantry and field artillery, squadron sergeants-major, sergeants-major junior grade coast artillery, battalion quartermaster-sergeants, field artillery, and master gunners, forty dollars; electrician-sergeants second class, sergeants of engineers, ordnance, and Signal Corps, quartermaster-sergeants of engineers, and color-sergeants, thirty-six dollars; sergeants and quartermaster-sergeants of cavalry, artillery, and infantry, stable-sergeants, sergeants, and acting cooks of the Hospital Corps, firemen, and cooks, thirty dollars.[3] *Act of May 11, 1908 (35 Stat. 109).*

696. *Same—Indian scouts.*—Indians, enlisted or employed by order of the President as scouts, shall receive the pay and allowances of cavalry soldiers. That so much of the army appropriation act of twenty-fourth July, eighteen hundred and seventy-six, as limits the number of Indian scouts to three hundred is hereby repealed; and sections ten hundred and ninety-four and eleven hundred and twelve

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arrears to the United States; *held* that the refusal of the Paymaster-General was in accordance with section 1766 of the Revised Statutes. (XVII Opin. Att. Gen., 30.)

[1] See, as to effect on sureties, XX id., 447: This section does not apply to original vacancies. (XVIII id., 28; see, also, XVII id., 476.)

[2] Section 1766, Revised Statutes, which prescribes that "no money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable," has not in practice been so strictly construed as to preclude the making of stoppages against the pay of officers and enlisted men in such monthly amounts as to leave a margin for necessary living expenses. Thus where the stoppage against an enlisted man was $100, advised that it be collected at the rate of $10 per month. (Dig. Opins. J. A. G., p. 865, B2.)

[3] For pay and allowances of the female nurse corps, hospital matrons, and the hospital corps, see chapter on the Medical Department.

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of the Revised Statutes, authorizing the employment of one thousand Indian scouts, are hereby continued in force: *Provided*, That a proportionate number of noncommissioned officers may be appointed. And the scouts, when they furnish their own horses and horse equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed. Sec. 1276, R. S. *As amended by act of Aug. 12, 1876 (19 Stat. 131).*

697. *Same—Mess sergeants, corporals, mechanics, etc.*—Mess sergeants shall receive six dollars per month in addition to their pay; corporals of engineers, ordnance, Signal Corps, and Hospital Corps, chief mechanics, and mechanics, coast artillery, twenty-four dollars; corporals of cavalry, artillery, and infantry, mechanics of field artillery, blacksmiths and farriers, saddlers, wagoners, and artificers, twenty-one dollars. *Act of May 11, 1908 (35 Stat. 109).*

698. *Same—Blacksmiths, farriers, privates, etc.*—Not to exceed one blacksmith and farrier in each troop of cavalry and one mechanic in each battery of field artillery shall receive nine dollars per month additional for performing the duty of horseshoer; privates first class of engineers, ordnance, Signal Corps, and Hospital Corps, eighteen dollars; privates, Hospital Corps, sixteen dollars; trumpeters, musicians of infantry, artillery, and engineers, privates of cavalry, artillery, infantry, Signal Corps, and private second class, engineers and ordnance, fifteen dollars. *Id.*

699. *Same—Marksmen, classifications of.*—Hereafter enlisted men now qualified or hereafter qualifying as marksmen shall receive two dollars per month; as sharpshooters, three dollars per month; as expert riflemen, five dollars per month; as second-class gunners, two dollars per month; as first-class gunners, three dollars per month; as gun pointers, gun commanders, observers second class, chief planters and chief loaders, seven dollars per month; as plotters, observers first class, and casemate electricians, nine dollars per month, all in addition to their pay, under such regulations as the Secretary of War may prescribed, but no enlisted man shall receive at the same time additional pay for more than one of the classifications named in this section. *Id. (35 Stat. 110).*

700. *Same—Number of gun pointers, etc., not to be increased.*—Nothing in this Act shall be construed to increase the total number of gun pointers, gun commanders, observers, chief planters, chief loaders, plotters, and casemate electricians now authorized by law. *Id.*

701. *Same—Enlisted men of bands.*—Hereafter the monthly pay during the first enlistment of enlisted men of bands, exclusive of the band of the United States Military Academy, shall be as follows:

Chief musicians, seventy-five dollars; principal musicians and chief trumpeters, forty dollars; sergeants and drum-majors, thirty-

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six dollars: corporals, thirty dollars; and privates, twenty-four dollars; and the continuous-service pay of all grades shall be as provided in this Act: *Provided*, That army bands or members thereof shall not receive remuneration for furnishing music outside the limits of military posts when the furnishing of such music places them in competition with local civilian musicians. *Id.*

702. *Same—Not to be construed as to reduce that of any officer or enlisted man.*—Nothing herein contained shall be construed so as to reduce the pay or allowance now authorized by law for any officer or enlisted man of the Army; and all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed. *Id.*

703. *Same—Horseshoer.*—One of the two "blacksmiths and farriers" now authorized by law for each troop of cavalry shall hereafter be designated as "horseshoer" and receive the pay of a sergeant of cavalry, and the other shall hereafter be designated as "farrier" and receive the pay of a corporal of cavalry; and that one of the "mechanics" now authorized by law for each battery of field artillery shall hereafter be designated as "horseshoer" and receive the pay of a sergeant of artillery. *Act of Mar. 23, 1910 (36 Stat. 245).*

704. *Detachments at recruiting depots and prisons—Pay and allowances of.*—Hereafter the Secretary of War shall be authorized to detach from the Army at large such number of enlisted men as may be necessary to perform duty at the various recruit depots and the United States military prison, and of the enlisted men so detached, and while performing such duty, there shall be allowed for each depot and the prison one who shall have the rank, pay, and allowances of battalion or squadron sergeant-major, and for each recruit and prison company one who shall have the rank, pay, and allowances of first sergeant, five the rank, pay, and allowances of sergeant, and six the rank, pay, and allowances of corporal, of the arm of the service to which they respectively belong. *Act of June 12, 1906 (34 Stat. 242).*

705. Repealed. Increased pay in time of war repealed by Act of May 11, 1908 (35 Stat. 110), amending and reenacting section 6, Act of April 26, 1898. See opinion of this office of April 23, 1914, 72-200; 52-140.[1]

706. *Bonus for reenlistment.*—Hereafter any private soldier, musician or trumpeter honorably discharged at the termination of his first enlistment period who reenlists within three months of the date of said discharge shall, upon such reenlistment, receive an amount

[1] It has been decided by the Comptroller of the Treasury that the increase of 20 per cent authorized by section 6 of the act of April 26, 1898, is to be computed upon the minimum rates of pay, or pay proper, allowed by law to the several grades of enlisted men. All increases in or additions to the pay of enlisted men, as for reenlistment, length of service, certificates of merit, and the like are to be excluded from the computation. (4 Comp. Dec., 668.)

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equal to three months' pay at the rate he was receiving at the time of his discharge. *Act of May 11, 1908 (35 Stat. 110).*

707. *Same—Retained pay.*—Hereafter no pay shall be retained; but this provision shall not apply to deductions authorized on account of the Soldiers' Home.[1] *Act of Mar. 16, 1896 (29 Stat. 60).*

708. *Same—Continuous service.*—Hereafter any soldier honorably discharged at the termination of an enlistment period who reenlists within three months thereafter shall be entitled to continuous-service pay as herein provided, which shall be in addition to the initial pay provided for in this Act and shall be as follows, namely: For those whose initial pay as provided herein is thirty-six dollars or more an increase of four dollars monthly pay for and during the second enlistment, and a further increase of four dollars for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. For those whose initial pay as provided for herein is eighteen, twenty-one, twenty-four, or thirty dollars, an increase of three dollars monthly pay for and during the second enlistment, and a further increase of three dollars for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. For those whose initial pay as provided for herein is fifteen and sixteen dollars, an increase of three dollars monthly pay for and during the second and third enlistments each, and a further increase of one dollar for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. *Act of May 11, 1908 (35 Stat. 109).*

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[1] For act of May 11, 1908 (35 Stat. 110), repealing the authorized deduction from the pay of enlisted men for the benefit of the Soldiers' Home, see paragraph 721, post.

By the acts of May 15, 1872 (17 Stat. 116, sec. 1281, Revised Statutes), and June 16, 1890 (26 id., 157), certain portions of the monthly pay of enlisted men were retained by the United States. The sums so retained were paid to the soldier at discharge, with interest at the rate of 4 per cent per annum from the several dates of retention, provided the service of the soldier had been honest and faithful, and the Secretary of War was authorized to determine what misconduct on the part of the soldier should "constitute a failure to render honest and faithful service" within the meaning of the statute. It was provided, however, that "no soldier who has deserted at any time during the term of an enlistment shall be deemed to have served such term honestly and faithfully" (26 Stat. 157). The practice of retaining pay was discontinued as to enlisted men in the first year of their enlistments by the act of February 12, 1895 (28 Stat. 654), and as to enlisted men generally by the act of March 16, 1896 (29 Stat. 60). Since March 16, 1896, the several statutes respecting the retention of pay of enlisted men have applied only in the settlement of the accounts in cases where retained pay had accrued prior to the passage of the act of March 16, 1896.

Retained pay is authorized by law. The Secretary of War has no control over it. He only determines whether the service has been honest and faithful. The operation of the law follows immediately upon his decision, and either vests in the soldier the right to receive the pay or deprives him of it, according to the character of service he has rendered. (3 Dig. 2d Comp. Dec., 231.)

Under the act of June 16, 1890, the accounting officers have no jurisdiction to review a decision of the Secretary of War that a soldier did not serve honestly and faithfully. (3 Comp. Dec., 557.)

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709. *Same—Commissioned service in Volunteer organizations to be counted as.*—All enlisted men of the Regular Army who served as commissioned officers of United States Volunteers organized in eighteen hundred and ninety-eight and eighteen hundred and ninety-nine, or who have served or may be now serving as such in the Porto Rico Provisional Regiment or in the Philippine Scouts, who, upon their muster out, have returned or may return to the ranks of the Regular Army, shall have such period of service counted as if it had been rendered as enlisted men, and that they be entitled to all continuous-service pay and to count, in computing the time necessary to enable them to retire, as enlisted men. *Act of Mar. 2, 1903 (32 Stat. 934).*

710. *Same—Commissioned service in Philippine Scouts to be counted as.*—All enlisted men of the Regular Army who have been appointed commissioned officers of Philippine Scouts subsequent to March second, nineteen hundred and three, or who may hereafter be so appointed, and who, upon their muster out, have returned or may return to the ranks of the Regular Army, shall have such period of service counted as if it had been rendered as enlisted men, and that they be entitled to all continuous service pay and to count, in computing the time necessary to enable them to retire, as enlisted men. *Act of June 12, 1906 (34 Stat. 248).*

711. *Same—Allotments of.*—The Secretary of War is hereby authorized to permit enlisted men of the United States Army to make allotments of their pay, under such regulations as he may prescribe, for the support of their families or relatives, for their own savings, or for other purposes, during such time as they may be absent on distant duty, or under other circumstances warranting such action.[1] *Sec. 16, Act of Mar. 2, 1899 (30 Stat. 981).*

712. *Same—Credit to disbursing officers for payment of.*—Hereafter all allotments of pay of enlisted men of the United States Army, under section sixteen of act of Congress approved March second, eighteen hundred and ninety-nine, that have been or shall be paid to the designated allottees, after the expiration of one month subsequent to the month in which said allotments accrued, shall pass to the credit of the disbursing officer who has made or shall make such payment: *Provided*, That said disbursing officer shall, before making payment of said allotments, use, or shall have used, due diligence in obtaining and making use of all information that may have been received in the War Department relative to the grantors of the allotments: *And provided further*, That if an erroneous payment

[1] Under section 16 of the act of March, 1899, which authorizes the Secretary of War to permit enlisted men of the Army to make allotments of their pay, payment in advance, or without evidence that the soldier is entitled to the amount allotted at the time the payment is to be made, is not authorized. (6 Comp. Dec., 252.)

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is made because of the failure of an officer responsible for such report to report, in the manner prescribed by the Secretary of War, the death of a grantor or any fact which renders the allotment not payable, then the amount of such erroneous payment shall be collected by the Paymaster-General from the officer who fails to make such report, if such collection is practicable.[1] *Act of Mar. 2, 1901 (31 Stat. 896).*

713. *Period and computation of time for retirement.*—That when an enlisted man has served as such thirty years in the United States Army or Marine Corps, either as private or noncommissioned officer, or both, he shall, by application to the President, be placed on the retired list hereby created, with the rank held by him at the date of retirement, and he shall receive thereafter seventy-five per centum of the pay and allowances of the rank upon which he was retired: *Provided*, That if said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be computed as double time in computing the thirty years necessary to entitle him to be retired.[2] *Act of Sept. 30, 1890 (26 Stat. 504).*

714. *Retired enlisted men—Additional allowances to.*—That when an enlisted man shall have served thirty years either in the Army, Navy, or Marine Corps, or in all, he shall, upon making application to the President, be placed upon the retired list, with seventy-five per centum of the pay and allowances he may then be in receipt of, and that said allowances shall be as follows: Nine dollars and fifty cents per month in lieu of rations and clothing and six dollars and twenty-five cents per month in lieu of quarters, fuel, and light: *Provided*, That in computing the necessary thirty years' time all service in the Army, Navy, and Marine Corps shall be credited. *Act of Mar. 2, 1907 (34 Stat. 1217).*

715. *Allowances of retired enlisted men—Cash payment in lieu of.*—Hereafter a monthly allowance of nine dollars and fifty cents be granted in lieu of the allowance for subsistence and clothing.[3] *Act of Mar. 16, 1896 (29 Stat. 62).*

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[1] For requirements of regulations in respect to allotments of pay by enlisted men, and payments of the same to the designated allottees, see paragraphs 1347–1360, A. R., 1913. Under the authority conferred by the above statutes the privilege of making allotments of pay is restricted to enlisted men and does not extend to commissioned officers.

[2] This statute replaces the act of February 14, 1885 (23 Stat. 305), on the same subject.

[3] For provisions as to pay of enlisted men of the Volunteer forces when in the service of the United States, under section 13, Act of April 27, 1914 (Pub. No. 90, 38 Stat. —), see paragraph 1394, ante.

See paragraph 1052, post, chapter Enlisted Men.

Under the act of February 14, 1885 (23 Stat. 305), and the act of September 30, 1890 (26 id., 504), providing that a hospital steward shall be retired on 75

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716. *Method of making and keeping.*—Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any army paymaster, who shall furnish him a deposit book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The amount so deposited shall be accounted for in the same manner as other public funds, and shall be deposited in the Treasury of the United States and kept as a separate fund, known as pay of the Army deposit fund, repayment of which to the enlisted man on discharge from the service shall be made out of the fund created by said deposits, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposits be exempt from liability for such soldier's debts: *Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same.[1] *Act of June 12, 1906 (34 Stat. 246).*

717. *Same—To bear interest.*—For any sums not less than five dollars so deposited for the period of six months or longer, the soldier, on his final discharge, shall be paid interest at the rate of four per centum per annum.[2] *Sec. 1306, R. S.*

718. *Same—Secretary of War to prescribe regulations for.*—The system of deposits herein established shall be carried into execution under such regulations as may be established by the Secretary of War.[3] *Sec. 1307, R. S.*

719. *Certificates of merit.*—A certificate of merit granted to an enlisted man for distinguished service shall entitle him, from the date of such service, to additional pay at the rate of two dollars per month while he is in the military service, although such service may not be continuous. *Sec. 2, Act of Feb. 9, 1891 (26 Stat. 737).*

720. *Same—During captivity.*—Every noncommissioned officer and private of the Regular Army, and every officer, noncommissioned offi-

per cent of the pay and allowances of the rank upon which he was retired, the steward is not entitled to commutation for fuel and quarters, but he is entitled to three-fourths of his entire personal pay, including clothing and subsistence. (Lander *v.* U. S., 30 Ct. Cls., 311.)

The increase of 20 per cent authorized in the pay of enlisted men in time of war does not apply to enlisted men on the retired list. (6 Comp. Dec., 182.)

[1] The act of June 16, 1890 (26 Stat. 157), contains the requirement that the sums retained from the monthly pay of enlisted men under sections 1281 and 1282, Revised Statutes, shall be treated as deposits upon which interest shall be paid in accordance with sections 1305, 1306, 1307, and 1308, Revised Statutes.

[2] Amended by the act of March 3, 1883 (22 Stat. 456), so as to authorize the deposit, at interest, of sums not less than $5 in amount.

[3] For regulations respecting deposits, see paragraphs 1361–1369, Army Regulations of 1913.

Held that a company commander can not legally force a soldier to deposit with the paymaster, nor can he, without the soldier's consent, deposit private money of the soldier which is in the company commander's possession. (Dig. Opins. J. A. G., p. 373, B.)

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cer, and private of any militia or volunteer corps in the service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law. *Sec. 1288, R. S.*

721. *Travel pay on discharge.*—That hereafter when an enlisted man is discharged from the service, except by way of punishment for an offense, he shall be entitled to transportation in kind and subsistence from the place of his discharge to the place of his enlistment, or to such other place within the continental limits of the United States as he may select, to which the distance is no greater than from the place of discharge to place of enlistment; but if the distance be greater he may be furnished with transportation in kind and subsistence for a distance equal to that from place of discharge to place of enlistment, or, in lieu of such transportation and subsistence, he shall, if he so elects, receive two cents a mile, except for sea travel, from the place of his discharge to the place of his enlistment.[1] *Act of Aug. 24, 1912 (37 Stat. 576).*

722. *Deductions for Soldiers' Home abolished.*—Sections twelve hundred and eighty, twelve hundred and eighty-one, and twelve hundred and eighty-four of the Revised Statutes be, and are hereby, repealed, and so much of section forty-eight hundred and nineteen as pertains to the deduction of twelve and one-half cents per month from the pay of every soldier of the Regular Army for the benefit of the Soldiers' Home be, and the same is hereby, repealed.[2] *Act of May 11, 1908 (35 Stat. 110).*

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[1] For provision of act of March 2, 1901 (31 Stat. 902), that transportation and subsistence only shall be furnished to enlisted men for sea travel on discharge, see paragraph 683, ante.

An officer or soldier who is discharged for his own convenience is not entitled to travel pay or allowances. (5 Comp. Dec., 113.) An enlisted man who is discharged at his own request by reason of the illness of his wife is discharged for his own convenience and is not entitled to travel pay. (Id., 939.)

Under section 1290, Revised Statutes, as modified by the act of February 27, 1877 (19 Stat. 244), it has been held that where a soldier's first discharge is followed by his reenlistment within a few days, so that his service is practically continuous, and his second discharge occurs at the place of his original enlistment, he is not entitled to commutation for travel and subsistence to the place of his second enlistment. (U. S. *v.* Thornton, 160 U. S., 654.)

[2] For section 1220, Revised Statutes, authorizing commanding officers to cause clothing to be altered and new made, so as to better fit them to the persons, respectively, for whose use they shall be delivered, and to deduct the cost of such alterations from the pay of the persons to whom the clothing is delivered; and act of March 2, 1889 (25 Stat. 831), fixing the maximum price for altering and fitting soldiers' clothing, see paragraphs 577 and 578, ante.

For section 1302, Revised Statutes, providing that the money value of all clothing overdrawn by the soldier beyond his allowance shall be charged against

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723. *Laundry, etc., for recruits at depots.*—Traders and laundrymen at depots for recruits in the Army are authorized to furnish such recruits, on credit, with laundry work and such articles as may be necessary for their cleanliness and comfort, at a total cost not to exceed seven dollars in value per man. That muster and pay rolls be made out showing the amounts the recruits respectively owe to the traders and laundrymen, and signed by them before leaving the depot, and that the traders and laundrymen be paid on such rolls, the amount paid for each recruit to be noted accordingly on the muster and descriptive rolls, in order that it may be withheld, after he joins his company, by the paymaster, at the first subsequent payment, under such rules and regulations as may be adopted by the War Department: *Provided*, That this provision shall apply only to recruits on their enlistment, and the credit shall only be allowed on the written order of the regular recruiting officer at said station.[1] *Sec. 3, Act of June 30, 1882 (22 Stat. 122).*

724. *Tobacco, deduction of amount due for.*—The amount due from any enlisted man for tobacco sold to him at cost prices by the United States shall be deducted from his pay in the manner provided for the settlement of clothing accounts. Sec. 1301, R. S.

725. *Subsistence stores, credit sales.*—The amount due from any enlisted man for articles designated by the inspectors-general of the Army, and sold to him on credit by commissaries of subsistence, shall be deducted from the payment made to him next after such sale shall have been reported to the Paymaster-General.[2] *Sec. 1300, R. S.*

726. *Assignment of pay forbidden.*—No assignment of pay by a noncommissioned officer or private, previous to his discharge, shall be valid. *Sec. 1291, R. S.*

727. *Detained pay—Appropriation from which payable.*—Hereafter sums known as detained pay, which have already been or may hereafter be withheld from the monthly pay of enlisted men of the

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him every six months on the muster roll of his company, etc., see paragraph 574, ante.

For section 1303, Revised Statutes, authorizing the deduction from the pay of any officer or soldier the cost of repairs or damages done to arms, equipments, or implements, when the damage was occasioned by their abuse or negligence, see paragraph 690, ante.

[1] The act of June 28, 1893 (27 Stat. 426), directing that no more post traders be appointed, will operate to restrict this privilege to laundrymen at depots. Paragraph 1169, Army Regulations of 1913, requires all laundry charges to be charged to the recruit on his clothing account and to be noted on his descriptive and assignment card.

[2] For rules respecting sales on credit see paragraphs 1242, 1244, and 1249–1251, Army Regulations of 1913.

A stoppage differs from a fine or forfeiture, in that the latter is imposed as punishment for an offense, while the former is a means of reimbursement or a "charge on account" to make good a loss. A stoppage can not therefore, in the absence of a statute or regulation authorizing it, legally be imposed as a punishment for an *offense*. But it is entirely legal to stop against a soldier's pay, under the Army Regulations, an amount required to reimburse the United

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Army in obedience to court-martial sentences, shall, when repaid, become a charge against the fund "pay of the Army" for the year in which said enlisted men have been or may be discharged. *Act of Aug. 6, 1894 (28 Stat. 236).*

HISTORICAL NOTE.

The office of Quartermaster General was created during the War of the Revolution by a resolution of Congress of June 16, 1775; by a subsequent resolution dated July 19, 1775, the appointment to the vacancy was vested in General Washington, and by a resolution of December 22, 1775, the rank of colonel was attached to the office. The appointment was conferred upon Thomas Mifflin, of Pennsylvania, who continued to exercise its functions until August 5, 1780, save for the period between June 5 and October 1, 1776, when the office was held by Col. Thomas Moylan. Upon the resignation of General Mifflin he was succeeded by Gen. Nathanael Greene, who was appointed to another command on August 5, 1780, and was succeeded by Col. Timothy Pickering, who continued to perform the duties of the office until the close of the war. On July 25, 1785, the office expired by statutory limitation. After the close of active military operations in 1781 the practice of supplying the troops by a system of contracts which had been resorted to during the war, and had been approved by a resolution of Congress dated October 2, 1778, was resumed and continued to exist until its failure as an efficient method of supply was demonstrated during the War of 1812.

The office of quartermaster was established by sections 5 and 6 of the act of March 3, 1791 (1 Stat. 222); the incumbent of this office was designated as Quartermaster General, and the rank of lieutenant colonel was conferred by sections 10 and 11 of the act of March 3, 1795 (id., 431), and the office as thus established was continued in the acts to ascertain and fix the military establishment, approved May 30, 1796 (id., 483), and March 3, 1797 (id., 507). The provisional establishment authorized in contemplation of war with France by the acts of May 28, 1798 (id., 558), and March 3, 1799 (id., 740), made provision for a Quartermaster General, with the rank of major general, with deputy quartermasters general for armies and quartermasters for divisions, who were to be selected from the line. Operations looking to an increase of the Army were suspended by the acts of February 20, 1800 (2 Stat. 7), and May 14, 1800 (id., 85). The duties hitherto performed by the Quartermaster's Department were, by section 3 of the act of March 16, 1802 (id., 133), devolved upon the Paymaster General, and upon the military agents and assistant military agents authorized by that enactment, and this arrangement continued until the establishment of the Quartermaster's Department in 1808.

The procurement of supplies for the military establishment during the period immediately following the organization of the Government under the Constitution was regulated by section 5 of the act of May 8, 1792 (1 Stat. 280), which contained the requirement that "all purchases and contracts for supplying the Army with provisions, clothing, supplies in the Quartermaster's Department, military stores, Indian goods, and all other supplies or articles for the use of the Department of War be made by or under the direction of the Treasury Department." The office of purveyor of public supplies in the Treasury Department was created by the act of February 23, 1795 (id., 419), and this officer was to perform the duties, in connection with contracts and purchases, which had been prescribed in the act of May 8, 1792. The power to make purchases

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States for loss on account of damage done to public property, while at the same time bringing the soldier to trial by court-martial for the offense involved. (Dig. Opins. J. A. G., p. 866 B5; Gratiot *v.* U. S., 15 Pet., 336; McKnight *v.* U. S., 98 U. S, 180.)

The United States is not authorized to stop against the pay of an officer or soldier an amount of personal indebtedness to another officer or soldier, though such indebtedness may have grown out of the relations of the military service. Thus, in the absence of a sentence of court-martial forfeiting the same, an officer's pay can not legally be stopped with a view to the reimbursement of enlisted men who have deposited with him money for safe-keeping, which he has failed to return when required, the officer being accountable for the same in a personal capacity only. (Dig. Opins. J. A. G., 866 B6.)

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for the military establishment, by contract or otherwise, was vested in the Secretary of War by section 3 of the act of July 16, 1798 (id., 610); and by section 6 of the same enactment, the corresponding power was withdrawn from the purveyor of public supplies, the purpose of the statute being to vest the power of purchase in the Secretary of War and that of auditing the vouchers of purchase in the accounting officers of the Treasury. By the act of March 3, 1809 (2 id., 535), a method of making purchases and of accounting for the same was prescribed by statute.

The Quartermaster's Department, eo nomine, was established by the act of March 28, 1812 (2 Stat. 690), and consisted of a Quartermaster-General, with the rank of brigadier-general, four deputy quartermasters, and as many assistant deputy quartermasters as, in the opinion of the President, the public service might require; in section 3 the duties of the department were defined. A commissary-general of purchases was also authorized, and a purchasing department was established, to consist of a commissary-general of purchases, a deputy for each division, six assistant commissaries of issues, and as many military storekeepers as the service might require. The duties of the purchasing department, which were to some extent in conflict with those prescribed for the Quartermaster's Department, appear to have been restricted to the procurement of subsistence stores and supplies, leaving the purchase of forage, the provision of transportation, etc., to the Quartermaster-General. The act of April 23, 1812 (id., 710), established a corps of artificers as a component part of the Quartermaster's Department; and by the act of May 22, 1812 (id., 742), a force of barrack masters was authorized, and officers of the department were required to give bond for the faithful expenditure of public moneys and accounting for all public property which might come into their hands. The office of superintendent-general of military supplies was created by the act of March 3, 1813 (id., 816), and charged with the duty of supervising the rendition and audit of accounts and returns from officers in the military service; this office was abolished by the act of March 3, 1817 (3 id., 366), the duties of audit being transferred to the accounting officers of the Treasury.

In the reorganization of the staff, which was accomplished by the act of April 24, 1816 (3 Stat. 297), the services of the Quartermaster-General were retained and a deputy quartermaster-general was authorized for each division and an assistant for each brigade, who were to supersede the existing quartermasters of brigades. By section 3 of the act of April 14, 1818 (id., 426), the department was to consist of a Quartermaster-General (brigadier-general), four assistant deputy quartermasters-general, and as many additional assistants as the President might deem proper. At the general reduction of 1821 the strength of the department was fixed at a Quartermaster-General (brigadier-general), two quartermasters (majors of cavalry), and ten assistant quartermasters, to be detailed from the line with $10 per month additional compensation. By section 4 of the act of May 18, 1826 (4 id., 173), two quartermasters and ten assistants were added, who were also to be taken from the line. This statute imposed upon the department the duty of distributing (but not purchasing) the clothing, camp and garrison equipage required for the use of the troops. By section 9 of the act of July 5, 1838 (5 id., 256), two assistant quartermasters-general (lieutenant-colonels), and eight assistant quartermasters (captains) were added, and officers already in the department were placed on the same footing in respect to rank, pay, and emoluments (that of officers of dragoons of corresponding rank) as those therein authorized; forage and wagon masters, not to exceed twenty in all, were also authorized. The office of commissary-general of purchases was abolished by section 3, act of August 23, 1842 (5 id., 512), and its duties were merged in those required to be performed by the Quartermaster's Department.

At the outbreak of the War with Mexico provision was made for the expansion of the department in section 5, act of June 18, 1846 (9 Stat. 17), by the appointment of a quartermaster (major) for each brigade and an assistant quartermaster (captain) for each regiment. By section 10, act of February 11, 1847 (id., 126), four quartermasters and ten assistant quartermasters were added to the department; by section 10, act of July 19, 1848 (id., 247), so much of the act of February 11, 1847, as required the discharge of the additional officers therein authorized was repealed. Five military storekeepers were added by the act of March 3, 1857 (11 id., 200).

For the volunteer forces called into the service at the commencement of the War of the Rebellion, brigade quartermasters (captains) were authorized for each brigade, and the permanent force of the department was increased by the

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addition of one colonel, two lieutenant-colonels, four majors, and twenty captains by section 3 of the act of August 3, 1861 (12 Stat. 287); captains after fourteen years' service were to be advanced to the grade of major, and wagon masters and teamsters were authorized with the pay and allowances of sergeants and corporals, respectively. The number of military storekeepers was increased to twelve by section 8 of the act of 1862 (id., 509). The office of the Quartermaster-General was reorganized into eight divisions, and six inspectors and ten chief quartermasters of armies and departments (colonels) and division quartermasters with the rank of major were authorized for the period of the war.

At the general reorganizaton of 1866 the strength of the department was increased to the following: One Quartermaster General (brigadier general), six assistant quartermasters general (colonels), ten deputy quartermasters general (lieutenant-colonels), fifteen quartermasters (majors), and forty-four assistant quartermasters (captains), section 13, act of July 28, 1866 (14 Stat. 334). The vacancies created by the act were to be filled by the appointment of persons who had served in the Quartermaster's Department during the War of the Rebellion; so soon as the vacancies created by the act had been once filled, however, there were to be no appointments or promotions to the grades of captain and major until the number of officers in those grades had been reduced to twelve and thirty, respectively. Promotions and appointments were prohibited until the further order of Congress by section 6, act of March 3, 1869 (15 Stat. 318, sec. 1194, R. S.), but this prohibition was removed by the act of March 3, 1875 (18 id., 330), which provided the following permanent organization for the department: One Quartermaster General (brigadier general), four assistant quartermasters general (colonels), eight deputy quartermasters general (lieutenant colonels), fourteen quartermasters (majors), and thirty assistant quartermasters (captains); no more military storekeepers were to be appointed, and the office was eventually to cease to exist upon the death or retirement of the storekeepers then in service. Appointments to the grade of captain from civil life were authorized, in the discretion of the President, by the act of March 3, 1883 (22 id., 456), but this requirement was repealed by the act of August 6, 1894 (28 id., 234), which restricted such appointments to officers of the next lower grade in the line of the Army. The corps of quartermaster sergeants was added by the act of July 5, 1884 (23 id., 107), and the corps of army service men was attached to the department by the act of June 20, 1890 (26 id., 163). At the outbreak of the War with Spain the Secretary of War was authorized by the act of July 7, 1898 (30 id., 714), to assign four officers of the department to duty as inspectors, and these officers, together with the four principal assistants in the office of the Quartermaster General, the heads of the divisions in the same office, and the officers in charge of the principal depots, not exceeding twelve in number, were to have, during such assignment, the rank and pay one grade higher than that actually held by them in the Regular or Volunteer service; such increase in rank, however, was in no case to exceed that of colonel, and was to continue for a period not exceeding one year after the close of the war. Two colonels, two lieutenant colonels, three majors, and twenty captains were added to the volunteer force of the department for the period of the existing war. The corps of post quartermaster sergeants was increased to a total strength of one hundred and five by the act of July 8, 1898 (id., 728).

By section 16 of the act of February 2, 1901 (31 Stat. 751), the permanent strength of the department was fixed at one Quartermaster General with the rank of brigadier general, six assistant quartermasters general with the rank of colonel, nine deputy quartermasters general with the rank of lieutenant colonel, twenty quartermasters with the rank of major, and sixty quartermasters with the rank of captain mounted. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Quartermaster's Department.

By section 3 of the act of August 24, 1912 (37 Stat. 591), the Quartermaster's, Subsistence, and Pay Departments of the Army were consolidated into a single department known as the Quartermaster Corps of the Army; the officers of the consolidated departments thereafter being known as officers of the Quartermaster Corps, with the same titles of the rank held by them prior to the consolidation; and for the purpose of filling vacancies, to constitute one list arranged according to rank, etc.

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SUBSISTENCE DEPARTMENT.

The office of commissary general of supplies and purchases was created during the War of the Revolution by a resolution of Congress dated July 19, 1775, and on the recommendation of General Washington, Jonathan Trumbull, of Connecticut, was appointed to the office. The methods of supplying the Army with provisions having proved inadequate, however, the matter was investigated by a committee of the Congress, and the department was reorganized by a resolution of Congress dated June 10, 1777. Under the new arrangement the duties of purchase and distribution were separated and intrusted to independent bureaus under the commissary general of purchases and the commissary general of issues. The duties of the commissary general of issues were defined in the resolution of Congress of June 10, 1777; those of the commissary general of purchases were made the subject of occasional modifications, and will be found in the resolutions of June 10, 1777, and November 30, 1780. By the resolution of July 10, 1781, the departments of purchases and issues were merged in the office of superintendent of finance, under whose direction a system of supplying the Army by contracts was established. By a subsequent resolution, dated May 28, 1784, the office of superintendent of finance was abolished, its duties being merged in the board of the Treasury, created by that enactment. Under this arrangement, which continued in force after the organization of the Government under the Constitution, all subsistence supplies for the Army were purchased by the Treasury Department under contracts entered into under the direction of the Secretary of the Treasury (sec. 5, act of May 8, 1792, 1 Stat. 280; act of February 23, 1795, id., 419). By the acts of July 16, 1798 (id., 610), and March 3, 1809 (2 id., 535), the present methods of purchasing supplies for the Army, and accounting for the same, were established.[1] The contract system continued to exist until the reorganization of the staff, which was accomplished by the act of April 4, 1818 (3 id., 426), when it was replaced by the present Subsistence Department.

At the reduction of 1802 a system of military agencies was established in connection with the procurement and distribution of subsistence stores and supplies. Three military agents and such number of assistant military agents, not exceeding one to each military post, as the service might require, were authorized by section 3 of the act of March 16, 1802 (2 Stat. 132); the assistants were to be selected from the line of the Army and were to receive additional monthly compensation. By section 4 of the act of March 28, 1812 (id., 696), the military agency system was abolished, and the duty of procuring military supplies was vested in the commissary general of purchases and in the Quartermaster's Department thereby created. By section 2 of the act of April 4, 1818 (3 id., 426), the office of commissary general was created with the rank and pay of a colonel of ordnance, and provision was made for as many assistant commissaries as the service might require; these officers were to be detailed from the line and were to receive twenty dollars per month additional pay. The duties of the department thus created were restricted to the purchase and issue of subsistence stores and supplies; and the system, which was experimental in character, was to continue for five years from the passage of the act.

At the general reduction of 1821[2] the organization of the department was somewhat modified, the office of commissary general of subsistence being created and provision made for as many assistant commissaries as the service might require, not exceeding fifty, who were to be taken from subalterns of the line, and were to receive, in addition to their monthly pay, certain sums, to be regulated by the Secretary of War, and to be not less than ten dollars nor more than twenty dollars in amount; they were to perform duty in both the Subsistence and Quartermaster's Departments, as might be required under the orders of the Secretary of War. By the act of June 23, 1823 (3 id., 721), the existing arrangement of the department was continued for five years. Two assistant commissaries with the rank of major were added to the department by the act of March 3, 1829 (4 id., 360), and the system was to be continued for a third period of five years. By section 5 of the act of March 3, 1835 (id., 780),

[1] For a more extended discussion of the methods of procuring supplies during the period between the organization of the Government under the Constitution and the general reorganization of the staff in 1821, see the note in connection with the Quartermaster's Department, page 275, *ante*.

[2] Act of March 2, 1821 (3 Stat. 615).

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the Subsistence Department, which had hitherto been in an experimental stage, was placed upon a permanent basis. By section 11 of the act of July 5, 1838 (5 id., 256), there were added to the department one assistant commissary general of subsistence with the rank and pay of a lieutenant colonel of dragoons, one commissary of subsistence with the rank and pay of quartermaster, and three commissaries wih the rank and pay of assistant quartermasters.

No further change in the composition or duties of the department was made until the outbreak of the War with Mexico, when, by section 5 of the act of June 18, 1846 (9 id., 17), the President was authorized to appoint as many additional officers, not exceeding one commissary (major) to each brigade, and one assistant commissary (captain) to each regiment, as he might deem necessary; these appointments, however, were not to extend beyond the period of the existing war. By the act of September 28, 1850 (9 id., 469), four commissaries of subsistence (captains) were added to the existing establishment, and these appointments were to be made from the line of the Army.

At the commencement of the War of the Rebellion a commissary of subsistence (captain) was allowed for each brigade of the volunteer forces authorized to be raised by the act of July 22, 1861 (12 Stat. 269), and four commissaries of subsistence (majors) and eight commissaries of subsistence with the rank of captain, were added to the permanent establishment by the act of August 3, 1861 (id., 287); by section 10 of the act of July 17, 1862 (id., 599), a commissary of subsistence for each Army corps, with the rank of lieutenant colonel, was also authorized. By the act of February 9, 1863 (id., 648), the department was reorganized, the rank of brigadier general being conferred upon the commissary general of subsistence, who was to be selected from the department, and one colonel, one lieutenant colonel, and two majors were added. These offices were to be filled by regular promotion.

The peace establishment of the department was fixed by section 16 of the act of July 28, 1866 (14 id., 334), as follows: One commissary general of subsistence (brigadier general), two assistant commissaries general of subsistence (colonels), two deputy commissaries general of subsistence (lieutenant colonels), eight commissaries (majors), and sixteen commissaries of subsistence (captains). The repealing clause of the act of July 28, 1866, having been regarded as including within its scope the provision for additional compensation to officers detailed from the line, which had been authorized by section 3 of the act of March 3, 1821 (3 id., 615), it was provided by section 24 of the act of July 15, 1870 (16 id., 320), that lieutenants of the line detailed to perform the duties of acting commissaries of subsistence should receive $100 additional pay per annum. Section 6 of the act of March 3, 1869 (15 id., 318), contained the requirement that there should be no more promotions or appointments in the staff of the Army until otherwise directed by law, but this restriction was removed, as to the Subsistence Department, by section 3 of the act of June 23, 1874, which reorganized the department and fixed its commissioned strength at one brigadier general, two colonels, three lieutenant colonels, eight majors, and twelve captains. By the act of February 12, 1895 (28 id., 656), the number of captains was reduced to eight. The requirement of the act of March 3, 1883 (22 id., 457), authorizing captains in this department to be appointed from civil life, was repealed by the act of August 6, 1894 (28 id., 234), and appointments to the lowest grade are now required to be made from the line of the Army. The act of June 30, 1882 (22 id., 118), and subsequent acts of appropriation have made provision for the payment of $100 additional pay to officers detailed from the line to perform the duties of acting commissaries of subsistence. A corps of post commissary sergeants was added to the department by the act of March 3, 1873 (17 id., 485; section 1142, Revised Statutes). They were to be appointed by the Secretary of War in such number as the service might require, but were not to exceed one for each military post.

By section 2 of the act of July 7, 1898 (30 id., 715), there were added to the strength of the department during the War with Spain eight majors and twelve captains of volunteers, and the two assistants to the commissary general of subsistence and the officers in charge of important depots were given one grade of rank and pay in addition to that actually held by them; such increase, however, was not to exceed the rank of colonel in any case, and was to continue for a period not exceeding one year after the close of the existing war.

By section 17 of the act of February 2, 1901 (31 Stat. 752), the permanent strength of the department was fixed at one commissary general with the rank of brigadier general, three assistant commissaries general with the rank of col-

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onel, four deputy commissaries general with the rank of lieutenant colonel, nine commissaries with the rank of major, and twenty-seven commissaries with the rank of captain mounted; the existing force of commissary sergeants was recognized and continued in service and were thereafter to be designated as post commissary sergeants. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Subsistence Department.

The Army ration.—The Army ration, as established by the act of April 30, 1790 (1 Stat. 121); section 8, act of March 3, 1795 (id., 434); and section 13, act of May 30, 1796 (id., 484), consisted of 1 pound of fresh or salt beef, or three-quarters of a pound of pork or bacon; 1 pound of flour, one-half a gill of spirits, and to each 100 rations 1 quart of salt, 2 quarts of vinegar, 2 pounds of soap, and 1 pound of candles. By section 3 of the act of June 7, 1794 (id., 242); section 6, act of January 2, 1795 (id., 400); and section 11, act of May 30, 1796 (id., 484), sundry additions were made to meat, bread, and seasoning components of the ration in the case of troops employed on frontier service. The ration was increased by section 6 of the act of July 16, 1798 (Id., 605), so as to consist of 1¼ pounds of fresh or salt beef, or three-quarters of a pound of pork or bacon; 1 pound and 2 ounces of flour; 1 gill of spirits; and to each 100 rations 2 quarts of salt, 2 quarts of vinegar, 4 pounds of soap, and 1½ pounds of candles; and the ration, as thus constituted, was made permanent by section 6 of the act of March 16, 1802 (2 id., 134). By section 22 of the act of March 3, 1799 (1 id., 749), the regular spirit ration was reduced to one-half gill, and commanding officers were authorized to make extra issues of spirits, at the rate of one-half gill per ration, "in cases of fatigue service or other extraordinary occasions."[1] The spirit ration was replaced by coffee and sugar at the rate of 6 and 12 pounds, respectively, per hundred rations, by section 17 of the act of July 5, 1838 (5 id., 256), and the ration of coffee and sugar was increased to 10 and 15 pounds, respectively, by section 4 of the act of June 21, 1860 (12 id., 68); by section 10, act of July 5, 1862 (id., 510), the extract of coffee was authorized to be issued in lieu of the coffee and sugar ration. A vegetable component, consisting of 15 pounds of beans or peas, or 10 pounds of rice or hominy, was added to the ration by Executive order, under the authority conferred by section 8 of the act of April 14, 1818 (3 id., paragraph 1069, Army Regulations of 1857). An increase in the components of the ration to the following extent was authorized by section 13 of the act of August 3, 1861 (12 id., 289): The ration of bread or flour was increased to 22 ounces, and an alternate issue of 1 pound of hard bread authorized, and a vegetable ration, to consist of 1 pound of potatoes, was required to be issued "at least three times per week, if practicable." This increase was to terminate at the close of the war, when the ration was to be reduced to the articles and quantities as authorized by law or regulation on July 1, 1861. Pepper was added as one of the seasoning components, at the rate of 4 ounces to the hundred rations, by section 11, act of March 3, 1863 (12 id., 744), and section 2 of the act of June 20, 1864 (13 id., 144), contained the requirement that the ration should thereafter be the same as provided by law and regulation on the 1st day of July, 1861, with the addition of the pepper ration authorized by the act of March 3, 1863, the components of beans (or peas) or rice (or hominy) at the rate of 15 and 10 pounds, respectively, to the hundred rations, having been added by Executive regulation, were included in the operation of the act of July 1, 1864, and became part of the authorized ration. By section 5 of the act of June 16, 1890 (26 id., 158), 1

[1] Issues of spirits, as a component part of the ration, were discontinued by Executive order in 1832 (General Orders No. 100, A. G. O., 1832), and an issue of coffee and sugar was substituted therefor at the rate of 4 pounds of coffee and 8 pounds of sugar to the hundred rations.

By the act of March 2, 1819 (3 Stat. 488), and "extra gill of whisky or spirits" was allowed to enlisted men engaged in the construction of fortifications or the execution of surveys, but by the act of May 19, 1846 (9 Stat. 14), this ration was allowed to be commuted in money. Upon the discontinuance of the spirit ration in 1838, section 22 of the act of March 3, 1799 (1 Stat. 754), became operative, which authorized the issue of spirits "in case of fatigue service or other extra occasions." This placed the spirit ration upon the basis of an extra issue; such issues, therefore, being discretionary with the Executive. They were discontinued by General Orders No. 120, War Department, of 1865.

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pound of vegetables was added to the ration, "the proportion to be fixed by the Secretary of War."

By section 3 of the act of August 24, 1912 (37 Stat. 591), the Quartermaster, Subsistence, and Pay Departments of the Army were consolidated into a single department known as the Quartermaster Corps of the Army—the officers of the consolidated departments thereafter being known as officers of the Quartermaster Corps, with the same titles as the title held by them prior to the consolidation; and, for the purpose of filling vacancies, to constitute one list according to rank, etc.

PAY DEPARTMENT.

A system of payments to troops by means of regimental paymasters had been prescribed by several resolutions of Congress during the Government under the Articles of Confederation. The office of Paymaster General had also been established, but had ceased to exist prior to the organization of the Government under the Constitution, the office and duties of Paymaster General having been merged in those of commissioner of Army accounts by a resolution of Congress, dated March 3, 1787. The system of regimental paymasters, established during the War of the Revolution, was recognized and continued in the military force authorized by the act of September 29, 1789 (1 Stat. 95). A regiment of Infantry and a battalion of Artillery were added to the establishment by the act of April 30, 1790 (id., 119), to each of which a paymaster was attached with the proviso that the paymaster, in common with the other officers of the regimental staff, should be selected from subalterns of the line. An additional regiment of Infantry was authorized by the act of March 3, 1791 (id., 222), with the same organization, and three additional regiments of Infantry and a squadron of dragoons were added to the existing establishment by the act of March 5, 1792 (id., 241), the Infantry regiments having the organization prescribed by the act of April 30, 1790. As no paymaster was authorized for the squadron of dragoons, it is presumed that payments to that organization were made by an officer detailed for the purpose.

By section 3 of the act of May 8, 1792 (1 Stat. 280), a paymaster with the rank and pay of major was authorized, who was "to reside near the headquarters of the troops of the United States." He was required to give a bond in the sum of $20,000, and his duties were defined in the same enactment. By section 3 of the act of March 3, 1797 (id., 507), the title of Paymaster General was conferred upon this officer, who was to receive the pay and allowances already authorized by law. By section 7 of the act of May 28, 1798 (id., 558), passed in contemplation of war with France, the rank and pay of lieutenant colonel was conferred upon the incumbent of the office of Paymaster General, and deputy paymasters were authorized in addition to the regimental paymasters. By section 3 of the act of March 16, 1802 (2 id., 132), passed with a view to reduce and fix the military peace establishment, provided for a paymaster of the Army; he was to be assisted by seven paymasters and two assistants, who were to be attached to districts; the deputy paymasters and assistants were to be detailed from the line and were to receive additional pay at the rate of $30 and $10 per month, repectively.

The distribution of clothing to the Army was vested in the pay department by section 8 of the act of March 16, 1802 (2 id., 132), and section 9 of the act of January 11, 1812 (id., 671); this duty continued to be performed by the pay department until it was transferred to the quartermaster's department by the act of May 18, 1826 (4 id., 173).

Provision was made for the payment of the troops during the War of 1812 by the appointment of as many district paymasters as the President might deem necessary; if taken from the line these officers were to receive $30 per month additional pay; if appointed from civil life, they were to receive the pay and emoluments of majors of infantry. Act of May 16, 1812, 2 Stat. 735. The Pay Department was established, eo nomine, by section 3 of the act of April 24, 1816 (3 id., 297), and was to consist of a Paymaster General, who, with the regiment and battalion paymasters, was to constitute the Pay Corps. The regimental and battalion paymasters were given the rank of majors of infantry, and were to be selected from subalterns of the line or from civil life; provision was made in this act for clerical service by a clause authorizing the detail of noncommissioned officers as paymasters' clerks, who, while so employed, were to receive double pay. Fourteen paymasters were added to the department by the act of March 2, 1821 (id., 615), and three by the act of July 4, 1836 (5 id.,

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117). The twenty-fifth section of the act of July 5, 1838 (5 id., 256), made provision for the expansion of the department, to meet the emergency of a sudden increase in the strength of the Army, by authorizing the President to appoint such number of additional paymasters as he might deem necessary "to pay the troops with sufficient punctuality"; such increase, however, was not "to exceed one for every two regiments of militia or volunteers," and the additional paymasters were to be continued in service only so long as their services might be required to pay militia and volunteers. The substance of this requirement was subsequently incorporated in the Revised Statutes as section 1184 of that enactment. By section 3 of the act of July 4, 1836, the President was authorized to assign any officer of the Army to duty as a paymaster, and the officer so assigned was to give bond, but was entitled to receive the pay and emoluments allowed by law to paymasters. By section 4 of the act of August 23, 1842 (id., 512), the number of majors in the departments was reduced to fourteen.

The duties of the officer of the Pay Department were defined by section 4 of the act of April 24, 1816 (3 id., 297), and by the act of July 14, 1832 (4 id., 580), bonds were required and paymasters brought under the Articles of War by section 6 of the act of April 24, 1816 (3 id., 297). The rank indicated by their pay and allowances was conferred upon officers of this department by section 13 of the act of March 3, 1847 (9 id., 184), and the restriction in respect to the exercise of command, which is embodied in section 1183 of the Revised Statutes, appeared originally in the same enactment. By section 12 of the same act two deputy paymasters general (lieutenant colonels) were added to the establishment. At the close of the war with Mexico the organization of the department was fixed at one Paymaster General (colonel), two deputy paymasters general (lieutenant colonels), and twenty-five paymasters with the rank of major, and the officers of the department were placed upon the same footing in respect to tenure of office as officers of other disbursing departments of the Army. By the same enactment the bonds of paymasters were required to be renewed at least once in every four years, and as much oftener as the President might direct.

The needs of the department were met during the period of the War of the Rebellion by the appointment of additional paymasters under the authority conferred by section 25 of the act of July 5, 1838 (sec. 1184, Revised Statutes). At the general reorganization of the Army in 1866 the personnel of the department was established at one Paymaster General (brigadier general), two assistant paymasters general (colonels), two deputy paymasters general (lieutenant colonels), and sixty paymasters with the rank of major. The Paymaster General was to be selected from the corps, and the vacancies in the grade of major were to be filled by the appointment of persons who had served as additional paymasters during the War of the Rebellion. (Secs. 18 and 23, act of July 28, 1866, 14 Stat. 335.) At the reduction of 1869 it was provided by section 6 of the act of March 3, 1869 (15 id., 318), that there should be no more appointments or promotions in the department until the further order of Congress, but this requirement was modified by the act of June 4, 1872 (17 id., 219), which authorized the appointment of a Paymaster General with the rank of colonel to fill an existing vacancy, and by the act of March 2, 1875 (18 id., 338), and joint resolution No. 7 of March 2, 1875 (id., 524), which fixed the number of paymasters at fifty. The rank of brigadier general was restored to the office of Paymaster General by the act of July 22, 1876 (19 id., 95), and the restriction established by the act of March 3, 1869, was finally removed by the act of March 3, 1877 (id., 270).

A gradual reduction in the strength of the department was provided for in the acts of March 3, 1883 (22 Stat. 451), and July 5, 1884 (23 id., 108), by authorizing the voluntary retirement of paymasters of over twenty years' service, and by a requirement that there should be no more original appointments to the grade of lieutenant colonel and major until the number of officers in the department had been reduced to thirty-five and the organization of the department was thereafter to be as follows: One paymaster general (brigadier general), two assistant paymasters general (colonels), three deputy paymasters general (lieutenant colonels), and twenty-nine paymasters (majors). By the act of July 16, 1892 (27 id., 175), the number of majors was reduced to twenty-five, by the act of February 12, 1895 (28 id., 655), it was still further reduced to twenty, which was declared to be the number authorized by law.

By section 21 of the act of February 2, 1901 (31 Stat. 754), the permanent strength of the department was fixed at one Paymaster General with the rank

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of brigadier general, three assistant paymasters general with the rank of colonel, four deputy paymasters general with the rank of lieutenant colonel, twenty paymasters with the rank of major, and twenty-five paymasters with the rank of captain, mounted. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Pay Department.

By section 3 of the act of August 24, 1912 (37 Stat. 591), the Quartermaster's, Subsistence, and Pay Departments of the Army were consolidated into a single department known as the Quartermaster Corps of the Army, the officers of the consolidated departments thereafter being known as officers of the Quartermaster Corps, with the same titles of rank held by them prior to the consolidation; and, for the purpose of filling vacancies, to constitute one list arranged according to rank, etc.

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CHAPTER XIX.

THE MEDICAL DEPARTMENT.

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728. *Organization.*—From and after the approval of this Act the Medical Department of the United States Army shall consist of a Medical Corps and a Medical Reserve Corps, as hereinafter provided; and the Hospital Corps, the nurse corps, and dental surgeons, as now authorized by law. *Sec. 1, Act of Apr. 23, 1908 (35 Stat. 66).*

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THE MEDICAL CORPS.

729. *Composition.*—The Medical Corps shall consist of one Surgeon-General, with rank of brigadier-general, who shall be chief of the Medical Department; fourteen colonels, twenty-four lieutenant-colonels, one hundred and five majors, and three hundred captains or first lieutenants, who shall have rank, pay, and allowances of officers of corresponding grades in the cavalry arm of the service. Immediately following the approval of this Act all officers of the Medical Department then in active service, other than the Surgeon-General, shall be recommissioned in the corresponding grades in the Medical Corps established by this Act in the order of their seniority and without loss of relative rank in the Army, as follows: Assistant surgeons-general, with the rank of colonel, as colonels; deputy surgeons-general, with rank of lieutenant-colonel, as lieutenant-colonels; surgeons, with the rank of major, as majors; assistant surgeons, who at the time of the approval of this Act shall have served three years or more, as captains; and assistant surgeons, with the rank of first lieutenant, who at the time of the approval of this Act shall have served less than three years as such, as first lieutenants; and hereafter first lieutenants shall be promoted to the grade of captain after three years' service in the Medical Corps. *Sec. 2, id.*

730. *Rank and precedence.*—Officers of the Medical Department shall take rank and precedence in accordance with date of commission or appointment, and shall be so borne on the official Army Register. *Act of July 5, 1884 (23 Stat. 111).*

731. *Same.*—Those assistant surgeons who at the time of the approval of this Act shall have attained their captaincy by reason of service in the volunteer forces under the provisions of the Act of February second, nineteen hundred and one, section eighteen, or who will receive their captaincy upon the approval of this Act by virtue of such service, shall take rank among the officers in or subsequently promoted to that grade, according to date of entrance into the Medical Department of the Army as commissioned officers. *Sec. 3, Act of Apr. 23, 1908 (35 Stat. 67).*

732. *Appointments—Examinations.*—No person shall receive an appointment as first lieutenant in the Medical Corps unless he shall have been examined and approved by an army medical board consisting of not less than three officers of the Medical Corps designated by the Secretary of War. *Sec. 4, id.*

733. *Same—Contract surgeons.*—Any contract surgeon not over twenty-seven years of age at date of his appointment as contract surgeon shall be eligible to appointment in the regular corps. *Sec. 7, id.*

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734. *Promotions—Seniority.*—Promotions in the Medical Corps to fill vacancies in the several grades created or caused by this Act, or hereafter occurring, shall be made according to seniority, but all such promotions and all appointments to the grade of first lieutenant in said corps shall be subject to examination as hereinafter provided: *Provided*, That the increase in grades of colonel, lieutenant-colonel, and major provided for in this Act shall be filled by promotion each calendar year of not exceeding two lieutenant-colonels to be colonels, three majors to be lieutenant-colonels, fourteen captains to be majors, and of the increase in the grade of first lieutenant not more than twenty-five per centum of the total of such increase shall be appointed in any one calendar year. *Sec. 3, id.*

735. *Same—Examinations.*—No officer of the Medical Corps below the rank of lieutenant-colonel shall be promoted therein until he shall have successfully passed an examination before an army medical board consisting of not less than three officers of the Medical Corps, to be designated by the Secretary of War, such examination to be prescribed by the Secretary of War and to be held at such time anterior to the accruing of the right to promotion as may be for the best interests of the service: *Provided*, That should any officer of the Medical Corps fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should be found disqualified for promotion for any other reason, a second examination shall not be allowed, but the Secretary of War shall appoint a board of review to consist of three officers of the Medical Corps superior in rank to the officer examined, none of whom shall have served as a member of the board which examined him. If the unfavorable finding of the examining board is concurred in by the board of review, the officer reported disqualified for promotion shall, if a first lieutenant or captain, be honorably discharged from the service with one year's pay; and, if a major, shall be debarred from promotion and the officer next in rank found qualified shall be promoted to the vacancy. If the action of the examining board is disapproved by the board of review, the officer shall be considered qualified and shall be promoted. *Sec. 5, id.*

736. *Same.*—Any major of the Medical Corps on the active list of the army who, at his first examination for promotion to the grade of lieutenant-colonel in said corps, has been or shall hereafter be found disqualified for such promotion for any reason other than physical disability incurred in the line of duty shall be suspended from promotion and his right thereto shall pass successively to such officers next below him in rank in said corps as are or may become eligible to promotion under existing law during the period of his suspension;

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and any officer suspended from promotion, as hereinbefore provided, shall be reexamined as soon as practicable after the expiration of one year from the date of completion of the examination that resulted in his suspension; and if on such reexamination he is found qualified for promotion, he shall again become eligible thereto; but if he is found disqualified by reason of physical disability incurred in line of duty, he shall be retired, with the rank to which his seniority entitles him to be promoted; and if he is not found disqualified by reason of such physical disability, but is found disqualified for promotion for any other reason, he shall be retired without promotion. *Act of Mar. 3, 1909 (35 Stat. 737).*

737. *Saving clause.*—Nothing in this Act shall be construed to legislate out of the service any officer now in the Medical Department of the Army, nor to affect the relative rank or promotion of any medical officer now in the service, or who may hereafter be appointed therein, as determined by the date of his appointment or commission, except as herein otherwise provided in section three.[1] *Sec. 6, Act of Apr. 23, 1908 (35 Stat. 68).*

738. *Contract surgeons—Employment.*—In emergencies the Surgeon-General of the Army, with the approval of the Secretary of War, may appoint as many contract surgeons as may be necessary, at a compensation not to exceed one hundred and fifty dollars per month.[2] *Sec. 18, Act of Feb. 2, 1901 (31 Stat. 752).*

739. *Same—Authority.*—When a contract surgeon is in charge of a hospital he shall have the same authority as a commissioned medical officer.[3] *Act of Apr. 23, 1904 (33 Stat. 266).*

740. *Same—Assignment of pay.*—Hereafter contract surgeons and contract dental surgeons on duty in Alaska, Hawaii, the Philippine Islands, and Porto Rico may transfer or assign their pay accounts,

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[1] Paragraph 734, ante.

[2] This enactment replaces section 2 of the act of May 12, 1898 (30 Stat. 400), *in pari materia*. The office of contract surgeon was first established by regulation, but their compensation has been provided for in the annual acts of appropriation for the support of the Army. Such provision ceased to be made in the act of July 16, 1892 (27 Stat. 175), and, until May 12, 1898, when their employment was again authorized by law.

As to military rank and status of contract surgeons, see Dig. J. A. G., 97-98, 4 c, d.

A "contract" or "acting assistant" surgeon is not a military officer and has no military rank. He is amenable to the military jurisdiction when employed with the Army in the field *in time of war*, under the sixty-third article of war, but is in fact no part of the military establishment, being merely a civilian employed by the United States, by contract for his personal services as a medical attendant to the troops. When not serving with troops before the enemy he has no other relation to the military organization or the Government than that established by the terms of his contract, made in accordance with the Army Regulations. He is not subject to military orders in general, like an officer or soldier, but only to such orders or directions as properly pertain to the performance of his particular duties. He is, of course, not eligible to be detailed as a member of a military court. As a civilian, however, he is entitled to the *per diem* allowance, etc., when duly attending a court-martial. Dig. Opin. J. A. G., 97 (c).

[3] See A. R. 1391 and 1394 of 1913.

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when due and payable, in the methods now provided by regulations for commissioned officers of the Army. *Id.*

741.—*Duties—Assignment.*—Medical officers of the Army may be assigned by the Secretary of War to such duties as the interests of the service may demand.[1] *Sec. 3, Act of July 27, 1892 (27 Stat. 277).*

742. *Same—Attendance on officers' families.*—The medical officers of the Army and contract surgeons shall whenever practicable attend the families of the officers and soldiers free of charge.[2] *Act of July 5, 1884 (23 Stat. 112).*

743. *Same—Supervision of cooking.*—The officers of the Medical Department of the Army shall unite with the officers of the line, under such rules and regulations as shall be prescribed by the Secretary of War, in superintending the cooking done by the enlisted men; and the Surgeon-General shall promulgate to the officers of said corps such regulations and instructions as may tend to insure the proper preparation of the ration of the soldier. *Sec. 1174, R. S.*

THE MEDICAL RESERVE CORPS.

744. *Appointments, rights, and privileges.*—For the purpose of securing a reserve corps of medical officers available for military service, the President of the United States is authorized to issue commissions as first lieutenants therein to such graduates of reputable schools of medicine, citizens of the United States, as shall from time to time, upon examination to be prescribed by the Secretary of War, be found physically, mentally, and morally qualified to hold such commissions, the persons so commissioned to constitute and be known as the Medical Reserve Corps. The commissions so given shall confer upon the holders all the authority, rights, and privileges of commissioned officers of the like grade in the Medical Corps of the United States Army, except promotions, but only when called into active duty, as hereinafter provided, and during the period of such active duty. Officers of the Medical Reserve Corps shall have rank in said corps according to date of their commissions therein, and when employed on active duty, as hereinafter provided, shall rank next below all other officers of like grade in the United States Army. *Sec. 7, Act of Apr. 23, 1908 (35 Stat. 68).*

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[1] For general provisions as to the duties of the Medical Department see pars. 1386, 1387, A. R. 1913. As to responsibility of a commanding officer ordering a soldier to duty when excused by the surgeon, see Dig. J. A. G., 266 A 2d.

[2] As to the meaning of the word practicable see Dig. J. A. G., 94, d, 1. As to officers' servants, see Dig. J. A. G., 98, 8, a. The circular referred to in 8, a, reads:

"Officers' servants can not, as a matter of right, be admitted to post hospitals for treatment. They are 'resident civilians not in the public service,' and while, as a matter of comity, it has been the practice to afford them (under the provisions of paragraph 1634 of the Regulations) medical attendance while inmates of officers' households, no further claim can be founded upon such practice." (Decision Sec. War, Jan. 16, 1890.)

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745. *Same—Contract surgeons.*—Contract surgeons now in the military service who receive the favorable recommendation of the Surgeon-General of the Army shall be eligible for appointment in said reserve corps without further examination. *Id.*

746. *Active duty in emergencies.*—In emergencies the Secretary of War may order officers of the Medical Reserve Corps to active duty in the service of the United States in such numbers as the public interests may require, and may relieve them from such duty when their services are no longer necessary: *Provided*, That nothing in this Act shall be construed as authorizing an officer of the Medical Reserve Corps to be ordered upon active duty as herein provided who is unwilling to accept such service, nor to prohibit an officer of the Medical Reserve Corps not designated for active duty from service with the militia, or with the volunteer troops of the United States, or in the service of the United States in any other capacity, but when so serving with the militia or with volunteer troops, or when employed in the service of the United States in any other capacity, an officer of the Medical Reserve Corps shall not be subject to call for duty under the terms of this section: *And provided further*, That the President is authorized to honorably discharge from the Medical Reserve Corps any officer thereof whose services are no longer required: *And provided further*, That officers of the Medical Reserve Corps who apply for appointment in the Medical Corps of the Army may, upon the recommendation of the Surgeon-General, be placed on active duty by the Secretary of War and ordered to the Army Medical School for instruction and further examination to determine their fitness for commission in the Medical Corps: *And provided further*, That any officer of the Medical Reserve Corps who is subject to call and who shall be ordered upon active duty as herein provided and who shall be unwilling and refuse to accept such service shall forfeit his commission.[1] *Sec. 8, id.*

747. *Same—Pay and allowances.*—Officers of the Medical Reserve Corps when called upon active duty in the service of the United States, as provided in section eight of this Act, shall be subject to the laws, regulations, and orders for the government of the Regular Army, and during the period of such service shall be entitled to the pay and allowances of first lieutenants of the Medical Corps with increase for length of service now allowed by law, said increase to be computed only for time of active duty. *Sec. 9, id.*

748. *Retirement and pensions.*—No officer of the Medical Reserve Corps shall be entitled to retirement or retirement pay, nor shall he be entitled to pension except for physical disability incurred in the line of duty while in active duty. *Id.*

[1] As to what constitutes an emergency see Dig. J. A. G., 95 a.

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749. *Same—Active service for 40 years.*—Any officer of the Medical Reserve Corps who shall have reached the age of seventy years, and whose total active service in the Army of the United States, Regular or Volunteer, as such officer, and as contract or acting assistant surgeon, and as an enlisted man, shall equal forty years, may thereupon, in the discretion of the President, be placed upon the retired list of the Army with the rank, pay, and allowances of a first lieutenant.[1] *Act of Mar. 4, 1911 (36 Stat. 1348).*

THE DENTAL CORPS.

750. *Composition, appointments, rights, etc.*—Hereafter there shall be attached to the Medical Department a dental corps, which shall be composed of dental surgeons and acting dental surgeons, the total number of which shall not exceed the proportion of one to each thousand of actual enlisted strength of the Army; the number of dental surgeons shall not exceed sixty, and the number of acting dental surgeons shall be such as may, from time to time, be authorized by law. All original appointments to the dental corps shall be as acting dental surgeons, who shall have the same official status, pay, and allowances as the contract dental surgeons now authorized by law. Acting dental surgeons who have served three years in a manner satisfactory to the Secretary of War shall be eligible for appointment as dental surgeons, and, after passing in a satisfactory manner an examination which may be prescribed by the Secretary of War, may be commissioned with the rank of first lieutenant in the dental corps to fill the vacancies existing therein. Officers of the dental corps shall have rank in such corps according to date of their commissions therein and shall rank next below officers of the Medical Reserve Corps. Their right to command shall be limited to the dental corps. The pay and allowances of dental surgeons shall be those of first lieutenants, including the right to retirement on account of age or disability, as in the case of other officers. *Act of Mar. 3, 1911 (36 Stat. 1054).*

751. *Qualifications, pay, etc.*—The time served by dental surgeons as acting dental or contract dental surgeons shall be reckoned in computing the increased service pay of such as are commissioned under this Act. The appointees as acting dental surgeons must be citizens of the United States between twenty-one and twenty-seven years of age, graduates of a standard dental college, of good moral character and good professional education, and they shall be required to pass the usual physical examination required for appointment in the Medical Corps, and a professional examination which shall include tests of skill in practical dentistry and of proficiency in the usual subjects of a standard dental college course. *Id.*

[1] This paragraph amends the act of June 22, 1910 (36 Stats. 580), by omitting the words "in the War of the Rebellion."

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752. *Same—Contract dental surgeons.*—The contract dental surgeons attached to the Medical Department at the time of the passage of this Act may be eligible for appointment as first lieutenants, dental corps, without limitation as to age: *And provided further*, That the professional examination for such appointment may be waived in the case of contract dental surgeons in the service at the time of the passage of this Act whose efficiency reports and entrance examinations are satisfactory. The Secretary of War is authorized to appoint boards of three examiners to conduct the examinations herein prescribed, one of whom shall be a surgeon in the Army and two of whom shall be selected by the Secretary of War from the commissioned dental surgeons. *Id.*

753. *Contract dental surgeons—Employment.*—The Surgeon-General of the Army, with the approval of the Secretary of War, is hereby authorized to employ dental surgeons to serve the officers and enlisted men of the Regular and Volunteer Army, in the proportion of, not to exceed one for every one thousand of said Army, and not exceeding thirty in all. Said dental surgeons shall be employed as contract dental surgeons under the same terms and conditions applicable to army contract surgeons, and shall be graduates of standard medical or dental colleges, trained in the several branches of dentistry, of good moral and professional character, and shall pass a satisfactory professional examination. *Sec. 18, Act of Feb. 2, 1901 (31 Stat. 752).*

754. *Same—Examination.*—Three of the number of dental surgeons to be employed shall be first appointed by the Surgeon-General, with the approval of the Secretary of War, with reference to their fitness for assignment, under the direction of the Surgeon-General, to the special service of conducting the examination and supervising the operations of the others; and for such special service an extra compensation of sixty dollars per month will be allowed: *Provided further*, That dental-college graduates now employed in the Hospital Corps, who have been detailed for a period of not less than twelve months to render dental service to the Army, and who are shown by the reports of their superiors to have rendered such service satisfactorily, may be appointed contract dental surgeons without examination.[1] *Id.*

755. *Same—Details.*—Hereafter the number of dental surgeons authorized by law shall be thirty-one, of which number one shall be detailed to the United States Military Academy.[2] *Act of Mar. 2, 1907 (34 Stat. 1163).*

[1] For regulations fixing the status and regulating the employment and duties of contract and dental surgeons see pars. 1390 to 1394, Army Regulations of 1913.

[2] The number of dental surgeons was increased to 60 by the act of March 3, 1911. (See p. 750, ante.)

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THE HOSPITAL CORPS.

756. *Composition.*—The Hospital Corps[1] of the United States Army shall consist of hospital stewards, acting hospital stewards, and privates; and all necessary hospital services in garrison, camp, or field (including ambulance service) shall be performed by the members thereof, who shall be regularly enlisted in the military service; said corps shall be permanently attached to the Medical Department.[2] *Act of Mar. 1, 1887 (24 Stat. 435).*

757. *Same.*—Hereafter the Hospital Corps of the United States Army shall consist of sergeants first class, sergeants, corporals, privates first class, and privates. *Act of Mar. 2, 1903 (32 Stat. 930).*

758. *Hospital stewards—Stations.*—The Secretary of War is empowered to appoint as many hospital stewards as, in his judgment, the service may require; but not more than one hospital steward shall be stationed at any post or place without special authority of the Secretary of War. There shall be no appointments of hospital stewards until the number of hospital stewards shall be reduced below one hundred, and thereafter the number of such officers shall not exceed one hundred.[3] *Sec. 2, Act of Mar. 1, 1887 (24 Stat. 435), as amended by Act of Mar. 16, 1896 (29 Stat. 61).*

759. *Same—Number.*—The Secretary of War is authorized to appoint in the Hospital Corps, in addition to the two hundred hospital stewards now allowed by law, one hundred hospital stewards. *Sec. 18, Act of Feb. 2, 1901 (31 Stat. 753).*

760. *Same—Examinations.*—No person shall be appointed a hospital steward unless he shall have passed a satisfactory examination before a board of one or more medical officers as to his qualifications for the position, and demonstrated his fitness therefor by service of not less than twelve months as acting hospital steward; and no person shall be designated for such examination except by written authority of the Surgeon-General. *Sec. 4, Act of Mar. 1, 1887 (24 Stat. 435).*

761. *Same—Qualifications.*—Men who have served as hospital stewards of volunteers of volunteer regiments, or acted in that capac-

[1] The act of March 11, 1864 (13 Stat. 20), made provision uniform for a system of ambulances for the armies in the field, by the establishment of an Ambulance Corps, to be composed of officers and enlisted men detailed for such service from the regiments of the line. The composition, distribution, and duties of the corps were regulated by statute, supplemented in some matters by Executive regulations and orders. The act of March 11, 1864, though passed to meet an emergency of war, was not restricted to a time of war and so continued in existence until replaced by the enactment establishing the Hospital Corps.

[2] Sections 1179, 1180, and 1181 of the Revised Statutes were repealed by the act of March 1, 1887 (24 Stat. 435), creating the Hospital Corps. By the act of March 8, 1898 (30 id., 261), the enlisted men of the Hospital Corps are required to be included in the authorized enlisted strength of the Army.

[3] The act of May 26, 1900 (31 Stat. 211), authorized an additional number of 100 hospital stewards.

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ity during and since the Spanish-American war for more than six months, may be appointed hospital stewards in the Regular Army: *And provided further*, That all men so appointed shall be of good moral character and shall have passed a satisfactory mental and physical examination. *Sec. 18, Act of Feb. 2, 1901 (31 Stat. 753).*

762. *Same—Quarters.*—Hereafter the posts at which such quarters [for hospital stewards] shall be constructed shall be designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. *Act of Feb. 27, 1893 (27 Stat. 484).*

763. *Rank and pay.*—The rank and pay of sergeants first class, sergeants, and privates first class shall be as now provided by law for hospital stewards, acting hospital stewards, and privates of the Hospital Corps; corporals shall receive twenty dollars per month and privates sixteen dollars, with such increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men.[1] *Act of Mar. 2, 1903 (32 Stat. 930).*

764. *Same—Hospital stewards.*—The pay of hospital stewards shall be forty-five dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men. They shall have rank with ordnance-sergeants and be entitled to all the allowances appertaining to that grade.[2] *Sec. 3, Act of Mar. 1, 1887 (24 Stat. 435).*

765. *Same—Privates.*—The pay of privates of the Hospital Corps shall be eighteen dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men; they shall be entitled to the same allowances as a corporal of the arm of service with which on duty.[3] *Act of July 13, 1892 (27 Stat. 120).*

766. *Privates; number and duties.*—The Secretary of War is empowered to enlist, or cause to be enlisted, as many privates of the Hospital Corps as the service may require, and to limit or fix the number, and make such regulations for their government as may be necessary; and any enlisted man in the Army shall be eligible for transfer to the Hospital Corps as a private. They shall perform duty as wardmasters, cooks, nurses, and attendants in hospitals, and as stretcher bearers, litter bearers, and ambulance attendants in the field, and such other duties as may by proper authority be required of them. *Sec. 5, Act of Mar. 1, 1887 (24 Stat. 435).*

767. *Same—Details.*—Privates of the Hospital Corps may be detailed as acting hospital stewards by the Secretary of War, upon the

[1] See note to par. 765, post.
[2] See note to par. 765, post.
[3] The monthly pay of men in the Hospital Corps was fixed by the act of May 11, 1908, as follows: Sergeant, first class, $50; sergeant, $30; acting cook, $30; corporal, $24; private, first class, $18; private, $16.

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recommendation of the Surgeon-General, whenever the necessities of the service require it; and while so detailed their pay shall be twenty-five dollars per month, with increase as above stated.[1] Acting hospital stewrads, when educated in the duties of the position, may be eligible for examination for appointment as hospital stewards as above provided. *Sec. 7, id.*

768. *Ambulance companies.*—The Secretary of War is authorized to organize companies of instruction, ambulance companies, field hospital, and other detachments of the Hospital Corps as the necessities of the service may require. *Act of Mar. 2, 1903 (32 Stat. 930).*

THE NURSE CORPS.

769. *Composition; pay of superintendent.*—The Nurse Corps (female) shall consist of one superintendent, to be appointed by the Secretary of War, who shall be a graduate of a hospital training school having a course of instruction of not less than two years, whose term of office may be terminated at his discretion, whose compensation shall be one thousand eight hundred dollars per annum, and of as many chief nurses, nurses, and reserve nurses as may be needed. Reserve nurses may be assigned to active duty when the emergency of the service demands, but shall receive no compensation except when on such duty: *Provided*, That all nurses in the Nurse Corps shall be appointed or removed by the Surgeon-General, with the approval of the Secretary of War; that they shall be graduates of hospital training schools, and shall have passed a satisfactory professional, moral, mental, and physical examination. *Sec. 19, Act of Feb. 2, 1901 (31 Stat. 753).*

770. *Allowances of superintendent.*—The superintendent shall receive such allowances of quarters, subsistence and medical care during illness as may be prescribed in regulations by the Secretary of War. *Act of Aug. 24, 1912 (37 Stat. 575).*

771. *Pay of Nurse Corps.*—The Superintendent and members of the Female Nurse Corps shall hereafter be paid at the following rates: Superintendent Nurse Corps, one thousand eight hundred dollars per annum; female nurses, fifty dollars per month for the first period of three years' service; fifty-five dollars per month for the second period of three years' service; sixty dollars per month for the third period of three years' service; and sixty-five dollars per month after nine years' service in said Nurse Corps; and all female nurses shall hereafter be entitled, in addition to the rates of pay as herein provided, to ten dollars per month when serving beyond the limits

[1] A private who is detailed as an acting hospital steward, as provided in the act of March 1, 1887, is to be regarded as promoted to that grade, and the extra pay, travel pay, and retired pay to which he may be entitled upon discharge or retirement are to be computed on the basis of the pay provided for an acting hospital steward. (6 Comp. Dec., 807.)

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of the States comprising the Union and the Territories of the United States contiguous thereto (excepting Porto Rico and Hawaii), and to cumulative leave of absence with pay at the rate of thirty days for each calendar year of service in said corps; and when serving as chief nurses their pay may be increased by authority of the Secretary of War, such increase not to exceed thirty dollars per month; and the superintendent shall be entitled to the same allowances, when on duty, as the members of the Nurse Corps. *Act of Mar. 23, 1910 (36 Stat. 249).*

772. *Cumulative leaves.*—The superintendent and members of the Female Nurse Corps when serving in Alaska or at places without the limits of the United States may be allowed the same privileges in regard to cumulative leaves of absence and method of computation of same as are now allowed by law to Army officers so serving. *Act of Mar. 4, 1912 (37 Stat. 72).*

772½. *Transportation expenses.*—The superintendent and nurses shall receive transportation and necessary expenses when traveling under orders. *Sec. 19, Act of Feb. 2, 1901 (31 Stat. 753).*

HOSPITALS.[1]

773. *Hospital matrons—Employment.*—Hospital matrons * * * may be employed in post or regimental hospitals in such numbers as may be necessary. *Sec. 1239, R. S.*

774. *Same—Pay and allowances.*—Hospital matrons in post and regimental hospitals shall receive ten dollars a month * * *. One ration in kind or by commutation shall be allowed to each.[2] *Sec. 1277, R. S.*

775. *Hospital supplies.*—Such quantities of fresh or preserved fruits, milk, butter, and eggs as may be necessary for the proper diet of the sick may be allowed in hospitals. They shall be provided under such rules as the Surgeon-General, with the approval of the Secretary of War, shall prescribe.[3] *Sec. 1175, R. S.*

MISCELLANEOUS.

776. *Treatment in private hospitals, etc.*—For medical care and treatment not otherwise provided for, including care and subsistence

[1] As to hospital buildings, management of the same, etc., see pars. 1464 to 1470, A. R., 1913.

[2] The authority for the employment of female nurses, conferred by section 1239, Revised Statutes, was replaced by section 19, act of February 2, 1901, paragraphs 769 to 772½, ante. The rate of compensation for female nurses fixed at 40 cents per day by section 1277 of the Revised Statutes, was replaced by the rates of compensation established in section 19 of the act of February 2, 1901 (31 Stat. 753), paragraph 771, ante.

[3] For statutes authorizing an addition to the ration in the case of patients in hospital who are too sick to be subsisted on the Army ration, and for a similar increase in case of enlisted men in camp during recovery from low conditions of health, consequent upon service in unhealthy regions or in debilitating climates, see the act of February 26, 1900 (31 Stat. 212).

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in private hospitals, of officers, enlisted men,[1] and civilian employees of the Army, of applicants for enlistment, and of prisoners of war and other persons in military custody or confinement, when entitled thereto by law, regulation, or contract: *Provided*, That this shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furlough, * * * dollars.[2] *Act of Mar. 2, 1913 (37 Stat. 718).*

777. *Pay of extra nurses.*—For the pay of male and female nurses, not including the Nurse Corps (female), and of cooks and other civilians employed for the proper care of sick officers and soldiers, under such regulations fixing their number, qualifications, assignment, pay, and allowances as shall have been or shall be prescribed by the Secretary of War, * * * dollars.[3] *Act of Mar. 3, 1911 (36 Stat. 1054).*

778. *Epidemic diseases.*—For the proper care and treatment of epidemic and contagious diseases in the Army or at military posts or stations, including measures to prevent the spread thereof, and the payment of reasonable damages not otherwise provided for, for bedding and clothing injured or destroyed in such prevention, * * * dollars.[2] *Id.*

779. *Services of physicians.*—For the pay of civilian physicians employed to examine physically applicants for enlistment and enlisted men, and to render other professional services from time to time under proper authority, * * * dollars. *Act of Mar. 2, 1907 (34 Stat. 1172).*

780. *Board on preparation of viruses.*—The Surgeon-General of the Army, the Surgeon-General of the Navy, and the supervising Surgeon-General of the Marine-Hospital Service, are hereby constituted a board with authority, subject to the approval of the Secretary of the Treasury, to promulgate from time to time such rules as may be necessary in the judgment of said board to govern the issue, suspension, and revocation of licenses for the maintenance of establishments for the propagation and preparation of viruses, serums, toxins, antitoxins, and analogous products, applicable to the prevention and cure of diseases of man, intended for sale in the District of Columbia, or to be sent, carried, or brought for sale from any State, Territory, or the District of Columbia, into any other State, Territory, or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States: *Provided*, That all licenses issued for the maintenance of establish-

[1] As to medical attendance for Philippine Constabulary, see sections 1 to 5, Act of the Philippine Commission of November 7, 1903 (No. 985).

[2] This item has appeared in the annual appropriation for a number of years.

[3] Similar provisions have appeared in subsequent appropriation acts for the Army.

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ments for the propagation and preparation in any foreign country of any virus, serum, toxin, antitoxin, or product aforesaid, for sale, barter, or exchange in the United States, shall be issued upon condition that the licentiates will permit the inspection of the establishments where said articles are propagated and prepared, in accordance with section three of this act. *Sec. 4, Act of July 1, 1902 (32 Stat. 729).*

781. *Advisory board for Hygienic Laboratory.*—There shall be an advisory board for the hygienic laboratory provided by the Act of Congress approved March third, nineteen hundred and one, for consultation with the Surgeon-General of the Public Health and Marine-Hospital Service relative to the investigations to be inaugurated, and the methods of conducting the same, in said laboratory. Said board shall consist of three competent experts, to be detailed from the Army, the Navy, and the Bureau of Animal Industry by the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, respectively, which experts, with the director of the said laboratory, shall be ex officio members of the board, and serve without additional compensation. Five other members of said board shall be appointed by the Surgeon-General of the Public Health and Marine-Hospital Service, with the approval of the Secretary of the Treasury, who shall be skilled in laboratory work in its relation to the public health, and not in the regular employment of the Government. The said five members shall each receive compensation of ten dollars per diem while serving in conference, as aforesaid, together with allowance for actual and necessary traveling expenses and hotel expenses while in conference. Said conference is not to exceed ten days in any one fiscal year. The term of service of the five members of said board, not in the regular employment of the Government, first appointed shall be so arranged that one of said members shall retire each year, the subsequent appointments to be for a period of five years. Appointments to fill vacancies occurring in a manner other than as above provided shall be made for the unexpired term of the member whose place has become vacant. *Sec. 5, Act of July 1, 1902 (32 Stat. 713).*

782. *Artificial limbs.*—Every officer, soldier, seaman, and marine (all officers, non-commissioned officers, enlisted and hired men of the land and naval forces of the United States) who, in the line of duty in the military or naval service of the United States, shall have lost a limb or sustained bodily injuries depriving him of the use of any of his limbs, shall receive once every three years an artificial limb or appliance, or commutation therefor, as provided and limited by existing laws, under such regulations as the Surgeon-General of the Army may prescribe; and the period of three years shall be held to commence with the filing of the first application after the seven-

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teenth day of June, in the year eighteen hundred and seventy. The * * * sums * * * hereby appropriated shall be expended and disbursed under the direction of the Surgeon-General of the Army, and in accordance with existing laws. *Sec. 4787, R. S., as amended by Sec. 1, Act of Aug. 15, 1876 (19 Stat. 203); Act of Feb. 27, 1877 (19 Stat. 252); and Act of Mar. 3, 1891 (26 Stat. 1103).*

783. *Trusses.*—Every soldier of the Union Army, or petty officer, seaman, or marine in the naval service, who was ruptured while in the line of duty during the late war for the suppression of the rebellion, or who shall be so ruptured thereafter in any war, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States Army as best suited for such disability; and whenever the said truss or trusses so furnished shall become useless from wear, destruction, or loss, such soldier, petty officer, seaman, or marine shall be supplied with another truss on making a like application as provided for in section two of the original act of which this is an amendment: *Provided*, That such application shall not be made more than once in two years and six months: *And provided further*, That sections two and three of the said act of May twenty-eighth, eighteen hundred and seventy-two, shall be construed so as to apply to petty officers, seamen, and marines of the naval service, as well as to soldiers of the Army. *Sec. 1, Act of May 28, 1872 (17 Stat. 164), as amended by Act of Mar. 3, 1879 (20 Stat. 353).*

HISTORICAL NOTE.

The medical and surgical needs of the troops composing the revolutionary armies were, at first, supplied by the surgeons who were attached to the several regimental organizations, and no provision seems to have been made for medical or surgical supervision, for the procurement and distribution of supplies, or for the establishment of a general hospital service until 1775, when, by a resolution of Congress dated July 27, 1775, the office of Director-General was established, who was charged with the duties subsequently performed by the Purveyor-General of Medical Supplies. The same enactment provided for a medical staff composed of four surgeons and twenty surgeon's mates, for an apothecary and two storekeepers, and for hospital attendance at the rate of one nurse for every ten patients. Under the authority thus conferred several general hospitals were established at points conveniently near to the several theaters of military operations. The medical establishment thus created was modified by subsequent resolutions of Congress; the changes caused by the resolution of April 22, 1777, being so extensive as to constitute a complete reorganization of the department. As thus modified, however, the department continued in existence until the disbandment of the revolutionary armies in 1783. For the ten years succeeding the organization of the Government under the Constitution the medical and surgical necessities of the troops were met by the medical officers attached to the several organizations constituting the military establishment.

The act of March 2, 1799 (1 Stat. 721), passed in contemplation of a war with France, but which was never fully executed, made provision for a complete medical establishment consisting of a physician-general, an apothecary-general, and a purveyor, together with such numbers of hospital surgeons and mates

[1] Commutation rates for limbs, etc., were allowed by the same act, as follows: For artificial legs, $75; for arms, $50; for feet, $50; for apparatus for resection, $50. By the act of March 3, 1891 (26 Stat. 979), transportation from home to place of procurement of limbs and return was allowed.

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as the service might require, who were made liable to duty in the field as well as in the hospitals provided for in the statute. The act of March 2, 1799, was repealed and a Medical Department established by section 3 of the act of February 23, 1802 (2 ibid., 133), which fixed the strength of the department at two surgeons and twenty-five surgeon's mates, who were "to be attached to garrisons and posts, and not to corps." During the war of 1812 the necessities of the case were met by a temporary increase of the department and by the allowance of surgeons to regiments called into the service for the period of the war. By section 7 of the act of March 3, 1813 (ibid., 819), a physician and Surgeon-General was authorized, whose powers and duties were to be prescribed by the President of the United States. The office of apothecary-general was created by the act of April 24, 1816 (3 ibid., 297), but was abolished by the act of March 3, 1821. The office of Surgeon-General was created by section 2 of the act of April 14, 1818 (ibid., 426).

At the general reduction of 1821 the Medical Department was reorganized and made to consist of one Surgeon-General, eight surgeons, and forty-five assistant surgeons. Sec. 2, act of March 2, 1821 (3 ibid., 615). By the act of June 28, 1832 (4 ibid., 500), four surgeons and ten surgeon's mates were added. The act of June 30, 1834 (ibid., 714), contained a requirement that all candidates for appointment, or for promotion to the grade of surgeon, should pass a professional examination as a condition precedent to such appointment or promotion. By this enactment the pay of surgeons was fixed at that allowed to majors, assistant surgeons were to receive for the first five years' service the pay of first lieutenants, and after five years' service the pay of captains. The examination for promotion to the grade of surgeon was to take place after five years' service in the grade of assistant surgeon. By section 33 of the act of July 5, 1838 (5 ibid., 256), seven additional surgeons were authorized, but by section 4 of the act of August 23, 1842 (ibid., 512), a reduction of two surgeons and ten assistant surgeons was ordered, the displaced officers being allowed three months' pay when honorably discharged.

At the outbreak of the War with Mexico, under authority conferred by section 6 of the act of February 11, 1847 (9 ibid., 123), two surgeons and twelve assistant surgeons were added to the regular establishment, and regimental medical officers were authorized for the volunteer troops at the rate of one surgeon and one assistant surgeon to each regiment, their service being restricted to the period of the existing war. By the act of March 3, 1849 (ibid., 351), ten assistant surgeons were authorized, and the requirement of the act of July 19, 1848, prohibiting the filling of vacancies in the department was repealed. By the act of August 16, 1850 (11 ibid., 51), four surgeons and eight assistant surgeons were added to the establishment; the force of hospital stewards was increased to such number as the service might require, not to exceed one to each military post; and cooks and nurses, detailed from the enlisted men, were, for the first time, allowed extra-duty pay for service in post hospitals.

At the outbreak of the war of the rebellion regimental medical officers were again authorized, one surgeon and one assistant being allowed to each regiment; by the act of July 2, 1862 (12 Stat., 502), an additional assistant was authorized.

By section 3 of the act of July 22, 1861 (ibid., 269), one surgeon to each brigade was authorized, but by the act of July 2, 1862 (ibid., 502), these officers were merged in the corps of forty surgeons and one hundred and twenty assistant surgeons created by that statute for the period of the war.

By the act of June 21, 1861 (ibid., 378), four surgeons and four assistant surgeons were added to the department. By the act of April 16, 1862 (ibid., 378), the rank of brigadier-general was conferred upon the Surgeon-General; the office of assistant surgeon-general, with the rank and pay of colonel of cavalry was created and the addition of ten surgeons and twenty assistant surgeons was authorized; a corps of medical inspectors was created, consisting of one inspector-general of hospitals (colonel) and eight assistants (lieutenant-colonels), whose duties were defined by law, and who were to hold office during the continuance of the war. By the act of December 27, 1862 (ibid., 633), eight medical inspectors were added and authority was conferred upon these officers to discharge enlisted men for disability contracted in the military service. By this statute a corps of medical cadets was established which continued to exist until its gradual disbandment was brought about by the passage of the general act of reorganization in 1866. By the act of May 20, 1862 (ibid., 378), six medical storekeepers were authorized. By the act of February 25,

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1865 (13 ibid., 437), medical directors of armies in the field and of military departments were allowed the rank and pay of colonels, and those attached to army corps the rank and pay of lieutenant-colonels.

An ambulance service for the armies in the field was provided by the act of March 11, 1864 (13 ibid., 20). It was composed of officers and enlisted men detailed from the several army corps and was carried on under the direction of their respective medical directors. The duties of the corps were regulated by statute, and had to do, exclusively, with the transportation of the sick and wounded and the removal of the wounded from the battlefield. The corps ceased to exist at the disbandment of the volunteer armies in 1865.

At the general reorganization of 1866 (sec. 17, act of July 28, 1866, 14 ibid., 334), the strength of the department was fixed at one Surgeon-General, one assistant surgeon-general, one chief medical purveyor, and four assistant purveyors (lieutenant-colonels), sixty surgeons (majors), one hundred and fifty assistant surgeons, and five medical storekeepers; it was also provided that three years' service, instead of five, should be required of assistant surgeons before attaining the grade of captain. The act of March 3, 1869 (15 ibid., 318), contained a requirement prohibiting appointments and promotions in the staff until otherwise ordered by Congress; but this requirement was repealed as to the Medical Department by section 4 of the act of June 23, 1874 (18 ibid., 244), which fixed the strength of the medical establishment as follows: One Surgeon-General, one assistant surgeon-general, and one chief medical purveyor (colonel), two assistant medical purveyors (lieutenant-colonels), fifty surgeons, and one hundred and fifty assistant surgeons, who were to receive the rank of captain after five years' service, and five medical storekeepers; the number of contract surgeons was fixed in this statute at seventy-five. By the act of June 26, 1876 (19 ibid., 61), the number of assistant surgeons was fixed at one hundred and twenty-five, and the corps of medical storekeepers was discontinued, the reduction in both cases being accomplished by a requirement forbidding the filling of vacancies until the prescribed limit of numbers has been reached. By this statute the number of surgeons with the rank of colonel was increased to four, and the number with the rank of lieutenant-colonel to eight, the vacancies thus created to be filled by promotion according to seniority.

By the act of March 1, 1887 (24 ibid., 435), the Hospital Corps was created; by the act of July 27, 1892 (27 ibid., 276), the titles of office in the Medical Department were rearranged, officers holding the rank of colonels being arranged as assistant surgeons-general and those having the rank of lieutenant-colonels as deputy surgeons-general, and thereafter medical officers were to be assigned by the Secretary of War to such duties as the necessities of the service might require. By the act of August 18, 1894 (28 ibid., 403), the number of assistant surgeons was reduced to one hundred and ten; but by the act of May 12, 1898 (930 ibid., 406), the number of officers of this grade was increased to one hundred and twenty-five, and authority was conferred upon the Surgeon-General to employ such number of contract surgeons as might be necessary.

By section 18 of the act of February 2, 1901 (31 Stat., 752), the permanent strength of the department was fixed at one Surgeon-General with the rank of brigadier-general, eight assistant surgeons-general with the rank of colonel, twelve deputy surgeons-general with the rank of lieutenants-colonel, sixty surgeons with the rank of major, and two hundred and forty assistant surgeons with the rank of captain and first lieutenants mounted. A Nurse Corps (female), and a corps of dental contract surgeons were also added to the department.

By the act of April 23, 1908 (35 Stat. 66), it is provided that the Medical Department of the United States Army shall consist of a Medical Corps and a Medical Reserve Corps, as hereinafter provided; and the Hospital Corps, the Nurse Corps, and Dental Surgeons, as now authorized by law.

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CHAPTER XX.

THE CORPS OF ENGINEERS.

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784. *Organizations, etc.*—The Corps of Engineers shall consist of one Chief of Engineers with the rank of brigadier-general, of ten colonels, sixteen lieutenant-colonels, thirty-two majors, forty-three captains, forty-three first lieutenants, and forty-three second lieutenants. The enlisted force provided in section eleven of this Act, and the officers serving with the organized battalions thereof, shall constitute a part of the line of the Army: *Provided*, That the Chief of Engineers shall be appointed as now provided by law,[1] and hereafter vacancies in the Corps of Engineers in all other grades above that of second lieutenant shall be filled by promotion, according to seniority, from the Corps of Engineers. Any vacancies occurring at any time in the grade of second lieutenant shall be left for future promotions from the corps of cadets at the United States Military Academy. *Act of Apr. 23, 1904 (33 Stat. 263).*

785. *Same.*—The Corps of Engineers of the United States Army is hereby increased by five colonels, six lieutenant colonels, nineteen majors, seventeen captains, and thirteen first lieutenants. The increase in each grade hereby provided for shall be extended over a

[1] Section 1193, Revised Statutes, which provides that the chiefs of corps and departments named, including the Chief of Engineers, "shall be appointed by selection from the corps to which they belong."

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period of five years as nearly as practicable, and the original vacancies hereby created in each grade shall be filled by promotion from the next lower grade in accordance with existing law. *Sec. 5, Act of Feb. 27, 1911 (36 Stat. 957).*

786. *Appointments, qualifications.*—Vacancies in the grade of second lieutenant in the Corps of Engineers shall hereafter be filled, as far as may be consistent with the interests of the military service, by promotions from the Corps of Cadets at the United States Military Academy: *Provided*, That vacancies remaining in any fiscal year after the assignment of cadets of the class graduating in that fiscal year may be filled from civil life as hereinafter provided: *And provided further*, That the proportion of any graduating class assigned to the Corps of Engineers shall not be less than the proportion which the total number of officers authorized at date of graduation for that corps bears to the total number of officers authorized at same date for all branches of the Army to which cadets are eligible for promotion upon graduation, except when such a proportionate number is more than the number of vacancies existing at date of graduation plus the number of retirements due to occur in the Corps of Engineers prior to the first day of the following January. To become eligible for examination and appointment, a civilian candidate for the appointment as second lieutenant must be an unmarried citizen of the United States between the ages of twenty-one and twenty-nine, who holds a diploma showing graduation in an engineering course from an approved technical school, and is eligible for appointment as a junior engineer under the Engineer Bureau of the War Department. Selection of eligible civilians for appointment, including term of probation, shall be made as the result of such competitive examination into the mental, moral, and physical qualifications, and under such rules and regulations as shall be recommended by the Chief of Engineers and approved by the Secretary of War. *Id.*

787. *Promotions.*—When any lieutenant of the Corps of Engineers or Ordnance Corps has served fourteen years' continuous service as lieutenant, he shall be promoted to the rank of captain on passing the examination provided by the preceding section,[1] but such promotion shall not authorize an appointment to fill any vacancy, when such appointment would increase the whole number of officers in the corps beyond the number fixed by law; nor shall any officer be promoted before officers of the same grade who rank him in his corps. *Sec. 1207, R. S.*

788. *Same—Examinations.*—No officer of the Corps of Engineers below the rank of field officer shall be promoted to a higher grade until he shall have been examined and approved by a board of three

[1] Section 1206, Revised Statutes.

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engineers, senior to him in rank. If an engineer officer fail on such examination he shall be suspended from promotion for one year, when he shall be reexamined before a like board. In case of failure on such reexamination, he shall be dismissed from the service.[1] *Sec. 1206, R. S.*

789. *Limits of duty—Transfers.*—Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President. They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank. *Sec. 1158, R. S.*

ENLISTED FORCE.

790. *Organization.*—The enlisted force of the Corps of Engineers shall consist of one band and three battalions of engineers. *Sec. 11, Act of Feb. 2, 1901 (31 Stat. 750).*

791. *Part of line of Army.*—The enlisted force provided in section eleven of this act and the officers serving therewith shall constitute a part of the line of the Army. *Sec. 22, id.*

792. *Band.*—The engineers' band shall be organized as now provided by law for bands of infantry regiments.[2] *Sec. 11, id.*

793. *Engineer battalion.*—Each battalion of engineers shall consist of one sergeant-major, one quartermaster-sergeant, and four companies. *Id.*

794. *Same—Officers.*—Battalion adjutants, battalion quartermasters, and appropriate officers to command the companies and battalions of engineer soldiers shall be detailed from the Corps of Engineers. *Sec 1156, R. S., amended by sec. 11, Act of Feb. 2, 1901 (31 Stat. 750).*

795. *Company organization.*—Each company of engineers shall consist of one first sergeant, one quartermaster-sergeant with the rank, pay, and allowances of sergeant, eight sergeants, ten corporals, two musicians, two cooks, thirty-eight first-class and thirty-eight second-class privates. *Sec. 11, Act of Feb. 2, 1901 (31 Stat. 750).*

796. *Same—Increase.*—The President may, in his discretion, increase the number of sergeants in any company of engineers to twelve, and the number of corporals to eighteen, the number of first-class privates to sixty-four, and the number of second-class privates to sixty-four, but the total number of enlisted men authorized for the whole Army shall not, at any time, be exceeded. *Id.*

797. *Duties.*—The enlisted men of the engineer battalion shall be instructed in and perform the duties of sappers, miners, and ponto-

[1] For statutory regulations in respect to examinations for promotions, see the title "Examinations for promotion" in the chapter entitled The staff departments.

[2] For the organization of the infantry band, see par. 1099, post.

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niers, and shall aid in giving practical instruction in those branches at the Military Academy. They may be detailed by the Chief of Engineers to oversee and aid laborers upon fortifications and other works in charge of the Engineer Corps, and, as fort keepers, to protect and repair finished fortifications.[1] *Sec. 1157, R. S.*

798. *Character of equipment.*—The Chief of Engineers is authorized, with the approval of the Secretary of War, to regulate and determine the number, quality, form, and dimensions of the necessary vehicles, pontoons, tools, implements, arms, and other supplies for the use of the battalions of engineer soldiers. *Sec. 1152, R. S.*

799. *Retired officers—Employment.*—Section two of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five and for other purposes,[2] approved July thirty-first, eighteen hundred and ninety-four, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. *Sec. 7, Act of June 3, 1896 (29 Stat. 235).*

800. *Chief of Engineers' use of Library of Congress.*—The Joint Committee of Congress on the Library is authorized to extend the use of the books in the Library of Congress to * * * the Chief of Engineers of the Corps of Engineers United States Army, resident in Washington, on the same conditions and restrictions as members of Congress are allowed to use the Library. *J. R., No. 41, Aug. 28, 1890 (26 Stat. 678).*

801. *Subscriptions to be paid from appproprpiation of $25,000.*—That hereafter section thirty-six hundred and forty-eight, Revised Statutes, shall not apply to subscriptions for foreign and professional

[1] One company of bombardiers, sappers, and miners was authorized by the act of April 29, 1812 (2 Stat. 720), to be officered from the Corps of Engineers; this company was disbanded at the general reduction of 1821, act of March 2, 1821 (2 id., 615). A similar company, to be officered in the same manner, was authorized by the act of May 15, 1846 (9 id., 12); three additional companies were provided for in section 4 of the act of August 6, 1861 (12 id., 317). A sergeant-major, quartermaster-sergeant, and commissary-sergeant were authorized by section 4 of the act of June 20, 1864 (13 id., 144). By section 20 of the act of July 28, 1866 (14 id., 335), the enlisted establishment of the Corps of Engineers was fixed at five companies, with the battalion sergeant-major and quartermaster-sergeant already authorized by law. The grade of battalion commissary-sergeant was discontinued by section 10 of the act of July 15, 1870 (15 id., 318). Section 7 of the act of March 2, 1899 (30 Stat. 979), contained the requirement that the battalion of engineers and the officers serving therewith should constitute a part of the line of the Army; this provision was reenacted in section 22 of the act of February 1, 1901 (31 Stat. 754); by section 11 of the same enactment the enlisted force of the Engineer Corps was increased to three battalions of engineer troops and a band.

[2] Section 2, act of July 31, 1894 (28 Stat. 205).

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newspapers and periodicals to be paid for from this appropriation, $25,000. *Act of Apr. 27, 1914 (38 Stat. 369).*

FORTIFICATIONS.[1]

802. *Procurement of sites.*—Hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States in any court [2] having jurisdiction of such proceedings for the acquirement, by condemnation, of any land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted:

[1] The act of February 10, 1875, contained the following provision: "For torpedoes for harbor defenses and the preservation of the same, and for torpedo experiments in their application to harbor and land defense, and for instruction of engineer battalion in their preparation and application, fifty thousand dollars; *Provided*, That the money herein appropriated for torpedoes shall only be used in the establishment and maintenance of torpedoes to be operated from shore stations for the destruction of an enemy's vessel approaching the shore or entering the channels and fairways of harbors," which was repeated in the acts of February 10, 1875, June 20, 1876, March 3, 1877, March 23, 1878, March 3, 1879, May 4, 1880, March 3, 1881, and May 19, 1882. The act of March 3, 1883, contained the requirement that "one-half of the money herein appropriated may be used in the purchase of torpedoes of the latest improvement."

If, in the opinion of the Chief of Engineers, a contemplated building will be an appliance necessary in the operation of submarine mines for the defense of harbors, or will, when completed, be used in operating such mines, or in such a way as to render their operation possible for the defense of harbors, the cost of its erection is chargeable to the appropriation for torpedoes for harbor defense. (3 Comp. Dec., 30.)

[2] A proceeding to condemn lands for the use of the United States under this statute is properly brought in a district court of the United States. In such proceeding the practice should be in substantial conformity with that pursued in the courts of the State in which the lands are situated, when similar proceedings are there instituted. (U. S. *v.* Engeman, 45 Fed. Rep., 546.)

The manner in which the power of eminent domain of the United States shall be exercised is a matter of legislative discretion, and Congress, by the act of August 1, 1888 (25 Stat. 357), has vested in the United States circuit and district courts of the district in which land is situated jurisdiction of proceedings authorized to be instituted by any public officer to condemn such land for public purposes. By the act of August 18, 1890 (26 Stat. 316), the Secretary of War is authorized to cause proceedings to be instituted for the condemnation of land for military purposes "in any court having jurisdiction of such proceedings." *Held*, that said acts are *in pari materia*, and upon an application by the Secretary of War, under the latter act, the Attorney-General may, at his election, cause proceedings to be instituted for the condemnation of land for military purposes in either the State or Federal courts. (Chappell *v.* U. S., 81 Fed. Rep., 764.)

Where land proposed to be conveyed by a State to the United States for the purpose of fortifications was described in the proffered deed as extending to the sea and in a line along the sea, *held* that such a deed would convey only land extending to and bounded by a high-water mark, and advised that the grant should be so expressed as specifically to include the shore to low-water mark, and should also embrace such water-covered lands as would be sufficient to prevent the erection, by the authority of the State, of structures that might interfere with the proper use of the land for purposes of fortifications.

Where, however, under the laws of the State, a private owner's title extends to ordinary low-water mark, so that a conveyance bounding the lands "on the sea or salt water" would give title to low-water mark, *held* that a conveyance of "all that portion of Peddocks Island * * * lying north of a straight line across the island" would give title to low-water mark. (Dig. J. A. G. 920, D.)

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Provided, That when the owner of such land or rights pertaining thereto shall fix a price for the same, which, in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay. *Act of Aug. 18, 1890 (26 Stat. 316)*.

803. *Same—Barracks and quarters*—Hereafter in acquiring sites for fortifications it shall be the duty of the Secretary of War, in every case of such acquirement, to purchase or otherwise procure at the same time, under this and future appropriations for this purpose, sufficient land for necessary barracks and quarters for the artillery troops required in connection with each of such fortifications; but no part of the money appropriated for military posts shall be used for the purchase of any land except as herein specifically provided. *Act of Apr. 28, 1904 (33 Stat. 497)*.

804. *Same—Donations.*—The Secretary of War is hereby authorized to accept on behalf of the United States donations of lands or rights pertaining thereto required for the above-mentioned purposes. *Act of Aug. 18, 1890 (26 Stat. 316)*.

805. *Temporary forts—Emergency.*—In case of emergency when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five[1] of the Revised Statutes shall not be applicable in such cases. *Joint resolution No. 21, of Apr. 11, 1898 (30 Stat. 737)*.

806. *Work by contract or otherwise.*—It shall be the duty of the Secretary of War to apply the money herein appropriated under the heading "Fortifications and other works of defense," in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. *Act of Apr. 21, 1904 (33 Stat. 234)*.

807. *Disbursements.*—It shall be the duty of the engineer superintending the construction of a fortification, or engaged about the execution of any other public work, to disburse the moneys applicable to the same; but no compensation shall be allowed him for such disbursements.[2] *Sec. 1153, R. S.*

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[1] See par. 258, ante.

[2] As to the relation between constructing engineers and post commanders, see pars. 1503–1505, A. R., 1913, and G. O. No. 2, War Dept., 1914.

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808. *Same—Settlement of accounts by disbursing officers—Not by transfer settlement.*—Hereafter in the settlement of transactions between appropriations under the Engineer Department, or between the Engineer Department and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer of the Corps of Engineers or of the office, bureau. or department concerned. *Act of Apr. 27, 1914 (38 Stat. 369).*

HISTORICAL NOTE.

Legislative provision for the services of engineer officers with the Revolutionary armies was made at a relatively early stage in the progress of the war by a resolution of Congress of June 16, 1775, which authorized the employment of engineer officers at the headquarters of the Army and in the several departments. Col. R. Gridley was appointed Chief Engineer by General Washington, and his services were recognized and continued in that capacity by a resolution of Congress dated January 16, 1776. The difficulty of obtaining trained engineers in the Continental establishment made it necessary to secure such services abroad, and the action of the American commissioners in Paris, in employing several members of the French corps of engineers, was approved by Congress in a resolution dated July 8, 1777. A corps of engineers was subsequently established by the resolution of March 11, 1779, and M. Duportail, an officer of the Royal Engineers of France, was placed at its head, with the rank of brigadier general. This corps continued in service until the close of the war, not having been disbanded until November, 1783.

A Corps of Artillerists and Engineers was established by the act of May 9, 1784 (1 Stat. 366). This organization was required to be "completed" by the act of March 3, 1795 (id., 430), and an additional regiment of artillerists and engineers was added to the establishment by the act of April 27, 1798 (id., 552). The seventeenth and eighteenth sections of the act of March 3, 1799 (id., 755), passed in contemplation of war with France, authorized the appointment of two engineers "distinct from the Corps of Artillerists and Engineers," with the rank and pay of lieutenant colonels, and conferred power upon the President, in his discretion, to appoint an inspector of fortifications, who was to have the rank of major and was to be selected from the artillerists and engineers or from civil life. If he was appointed from the existing corps, he was to retain his office and was to rise "therein in the same manner as if he had never been appointed to the said office of inspector."

The functions of the artillerists and engineers were dissociated by the act of March 6, 1802 (2 id., 132), which created a regiment of Artillery and authorized the President to organize and establish a Corps of Engineers to consist of one major, two captains, two first lieutenants, two second lieutenants, and ten cadets; provision was made in the same enactment for the gradual expansion of the corps by a clause conferring authority upon the President to make promotions "without regard to rank" until the corps should consist of one colonel, one lieutenant colonel, two majors, four captains, four first lieutenants, and four second lieutenants. By the act of April 29, 1812 (2 id., 720), two captains, two first lieutenants, two second lieutenants, "to be taken from the subaltern officer of engineers," and one paymaster and a company of bombardiers, sappers, and miners were added to the existing establishment. The composition of this corps was not changed by the acts of March 3, 1815 (3 id., 224), and April 4, 1818 (id., 426), for the reduction and reorganization of the staff, nor was its organization modified at the general reduction of March 2, 1821 (id., 615).

By section 2 of the act of July 5, 1838 (5 Stat. 256), a Corps of Topographical Engineers was established, and the President was authorized to increase the Corps of Engineers by the addition of one lieutenant colonel, two majors, six captains, six first lieutenants, and six second lieutenants, and the pay of engineer officers was fixed at the rates established by law for officers of dragoons. By section 3 of the act of July 5, 1838, the paymaster authorized by the act of April 12, 1808, was transferred to the Pay Department. A second company of engineer soldiers was added to the corps by section 4 of the act of May 15, 1846 (9 id., 12). By the act of March 3, 1851 (id., 62), the President was authorized to employ officers of engineers on lighthouse duty, and by section 8 of the act of August 31, 1852

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(10 id., 119), officers of the corps were required to be attached to the Lighthouse Board as member and engineer secretary, respectively. By section 9 of the act of March 3, 1853 (id., 119), lieutenants of engineers, after fourteen years' continuous service, were to be entitled to the pay and allowances of captains. By section 3 of the act of August 5, 1861 (12 id., 287), three first lieutenants and three second lieutenants were added, and the organization of three additional companies of engineer soldiers was authorized by the act of August 6, 1861 (id., 317); two lieutenant colonels and four majors were added to the strength of the corps "by regular promotion." The Corps of Topographical Engineers was discontinued by the act of March 3, 1863 (id., 743), and its officers were merged in the Corps of Engineers. Examinations were also required, in all grades below that of field officer, as a condition precedent to promotion. The composition of the corps was fixed, by the same enactment, at one brigadier general, four colonels, ten lieutenant colonels, twenty majors, thirty captains, thirty first lieutenants, and ten second lieutenants. By section 19 of the act of July 28, 1866 (14 id., 333), the strength of the corps was fixed at one brigadier general, six colonels, twelve lieutenant colonels, twenty-four majors, thirty captains, twenty-six first lieutenants, and ten second lieutenants. By section 6 of the act of March 3, 1869 (15 id., 318), appointments and promotions in the several departments of the staff were suspended until otherwise directed by Congress. This requirement was removed, however, as to all officers below the grade of brigadier general by the act of June 10, 1872 (17 id., 382), and repealed as to the Chief of Engineers by the act of June 30, 1879 (21 id., 45). By the act of July 5, 1898 (30 id., 652), the strength of the Corps of Engineers was fixed at one brigadier general, seven colonels, fourteen lieutenant colonels, twenty-eight majors, thirty-five captains, thirty first lieutenants, and twelve second lieutenants.

By section 22 of the act of February 2, 1901 (31 Stat. 754), the strength of the department was fixed at one Chief of Engineers with the rank of brigadier general, seven colonels, fourteen lieutenant colonels, twenty-eight majors, forty captains, forty first lieutenants, and thirty second lieutenants. The enlisted force was also increased by the addition of two battalions of engineer troops. It was also provided that the troops of the three engineer battalions and the officers of Engineers assigned to duty therewith should constitute a part of the line of the Army.

By the act of April 23, 1904 (33 Stat. 263), the strength of the corps was fixed at one Chief of Engineers with the rank of brigadier general, ten colonels, sixteen lieutenant colonels, thirty-two majors, forty-three captains, forty-three first lieutenants, and forty-three second lieutenants. By section 5 of the act of February 27, 1911 (36 Stat. 957), the corps was increased by five colonels, six lieutenant colonels, nineteen majors, seventeen captains, and thirteen first lieutenants—the increase to be extended over a period of five years as nearly as practicable.

The Corps of Topographical Engineers.—The act of March 3, 1813 (2 Stat. 819), authorized the appointment of eight topographical engineers with the rank of major of cavalry and eight assistants with the rank of captain of infantry; but this force was reduced to two majors by the act of March 3, 1815 (id., 224). By the act of April 24, 1816 (id., 297), three majors and two assistants with the rank of captain were authorized for each division of the Army. On July 2, 1818, these officers were merged, by general orders, in the Corps of Engineers. In August, 1818, a topographical bureau was established in the War Department, the duties of the bureau being performed by officers detailed from the line. By the act of April 30, 1824 (4 id., 22), civil assistants were authorized to be employed, and on June 21, 1831, the Topographical Bureau was formally constituted, in general orders, as a separate office of the War Department.

The Corps of Topographical Engineers *eo nomine* was established by section 4 of the act of July 5, 1838 (5 Stat. 256), to consist of one colonel, one lieutenant colonel, four majors, ten captains, ten first lieutenants, and ten second lieutenants, who were to be appointed by selection from the Corps of Engineers, from the line of the Army, and from the civil engineers authorized by the act of April 30, 1824. The corps as thus constituted was increased by section 2 of the act of August 5, 1861 (12 id., 287), by the addition of three first lieutenants and three second lieutenants, and, by the act of August 6, 1861 (id., 317), by the addition of two lieutenant colonels, four majors, and one company of engineer soldiers. The corps was discontinued by the act of March 3, 1863 (12 Stat. 743), its officers being merged in the Corps of Engineers.

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CHAPTER XXI.

THE ORDNANCE DEPARTMENT—ARMORIES AND ARSENALS—BOARD OF ORDNANCE AND FORTIFICATION.

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THE ORDNANCE DEPARTMENT.

809. *Organization.*—The Ordnance Department shall consist of one chief of ordnance with the rank of brigadier-general; six colonels, nine lieutenant-colonels, nineteen majors, twenty-five captains, twenty-five first lieutenants, and the enlisted men, including ordnance-sergeants, as now authorized by law. *Act of June 25, 1906 (34 Stat. 455).*

810. *Promotions—Examinations.*—No * * * promotion in said department shall hereafter be made until the officer or person so * * * promoted shall have passed a satisfactory examination before a board of ordnance officers senior to himself.[1] *Sec. 5, Act of June 23, 1874 (18 Stat. 245).*

811. *Same—Seniority.*—So long as there remain any officers holding permanent appointment in the * * * Ordnance Department * * * they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which officers so promoted shall hold their appointments.[2] *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

812. *Details.*—When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided for in this section, it shall be filled by detail from the line of the Army. *Id.*

813. *Same—Term.*—All officers so detailed shall serve for a period of four years, at the end of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they have served two years with the line. *Id.*

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[1] Vacancies which may hereafter occur are required to be filled in accordance with the system of details prescribed in section 26 of the act of February 2, 1901. See, in this connection, the title Details to the Staff in the chapter entitled The Staff Departments.

[2] Examinations for promotions in this department are now regulated by the acts of June 23, 1874 (18 Stat. 245); October 1, 1890 (26 Id., 562); and July 27, 1892 (27 id., 276).

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814. *Same—Qualifications.*—Details to the Ordnance Department under the provisions of the Act of February second, nineteen hundred and one, may be made from the Army at large from the grade in which the vacancy exists, or from the grade below: *Provided*, That no officer shall be so detailed except upon the recommendation of a board of ordnance officers, and after at least one examination, which shall be open to competition: *And provided further*, That officers so detailed in grades below that of major shall not be again eligible for such detail until after they shall have served for at least one year out of that department. *Act of June 25, 1906 (34 Stat. 455).*

815. *Same—Rank.*—Hereafter officers serving by detail in the Ordnance Department, under the Acts of February second, nineteen hundred and one, and June twenty-fifth, nineteen hundred and six, shall take rank in their respective grades from the dates of their rank under their original detail in said grades. *Act of Mar. 3, 1909 (35 Stat. 751).*

816. *Assignments to corps and divisions.*—A chief ordnance officer may be assigned to the staff of an army or a corps commander, and while so assigned shall have the rank, pay, and allowance of a lieutenant-colonel. A chief ordnance officer may be assigned to the staff of a division commander, and while so assigned shall have the rank, pay and allowances of a major. *Act of July 7, 1898 (30 Stat. 720).*

817. *Ordnance bureau—Principal assistant.*—The principal assistant in the Ordnance Bureau shall receive a compensation, including pay and emoluments, not exceeding that of a major of ordnance. *Sec. 1279, R. S.*

818. *Same—Skilled draftsmen.*—The services of skilled draftsmen and such other services, not clerical, as the Secretary of War may deem necessary, may be employed in the office of the Chief of Ordnance to carry into effect the various appropriations for the armament of fortifications and for the arming and equipping of the Organized Militia, to be paid from such appropriations, in addition to the amount specifically appropriated for draftsmen in the Army Ordnance Bureau: *Provided*, That * * * the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed, their duties, and the amount paid to each.[1] *Act of Mar. 4, 1913 (37 Stat. 765.)*

ENLISTED MEN.

819. *Ordnance sergeants.*—There shall be an ordnance-sergeant for each military post, whose duty it shall be to take care of the ordnance, arms, ammunition, and other military stores at such post,

[1] This provision appears annually in the legislative, executive, and judicial appropriation act.

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under the direction of the commanding officer, and according to regulations prescribed by the Secretary of War.[1] *Sec. 1109, R. S.*

820. *Same—Qualifications.*—Ordnance-sergeants shall be selected by the Secretary of War from the sergeants of the line who shall have served faithfully for eight years, including four years in the grade of noncommissioned officer, and shall be assigned to their stations by him. *Sec. 1110, R. S.*

821. *Number of enlisted men.*—The Chief of Ordnance may enlist as many sergeants of ordnance, corporals of ordnance, and first and second class privates of ordnance as the Secretary of War may direct. *Sec. 1162, R. S.*

822. *Details of artificers.*—The Chief of Ordnance, subject to the approval of the Secretary of War, shall organize and detail to regiments, corps, or garrisons such numbers of ordnance enlisted men, furnished with proper tools, carriages, and apparatus, as may be necessary, and shall make regulations for their government. *Sec. 1163, R. S.*

823. *Chief of Ordnance—Duties.*—It shall be the duty of the Chief of Ordnance to furnish estimates, and, under the direction of the Secretary of War, to make contracts and purchases, for procuring the necessary supplies of ordnance and ordnance stores for the use of the armies of the United States; to direct the inspection and proving of the same, and to direct the construction of all cannon and carriages, ammunition wagons, traveling forges, artificers' wagons, and of every implement and apparatus for ordnance, and the preparation of all kinds of ammunition and ordnance stores constructed or prepared for said service.[2] *Sec. 1164, R. S.*

824. *Same—Supply of ordnance, etc.*—The Chief of Ordnance, or the senior officer of that corps for any district, shall execute all orders of the Secretary of War, and, in time of war, the orders of any general or field officer commanding an army, garrison, or detachment, for the supply of all ordnance and ordnance stores for garrison, field, or siege service. *Sec. 1166, R. S.*

825. *Same—Depots.*—The Chief of Ordnance, under the direction of the Secretary of War, may establish depots of ordnance and ordnance stores in such parts of the United States and in such numbers as may be deemed necessary.[3] *Sec. 1165, R. S.*

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[1] For pay and allowances of ordnance-sergeants, see chapter entitled the Quartermaster's Corps.

[2] For powers and duties of this office in respect to the care and accountability of ordnance and ordnance stores, see paragraphs, 834–836, post.

[3] *Clerical services.*—The employment of clerical services in the Ordnance Department is regulated in the annual acts of appropriation. The amount to be expended for such services was fixed at $65,000 by the acts of March 3, 1883, July 5, 1884, and March 3, 1885; at $60,000 by the acts of June 30, 1886, February 9, 1887, September 22, 1888, March 2, 1889, June 18, 1890, February 24, 1891, July 16, 1892, February 27, 1893, August 6, 1894, February 12, 1895, March 16, 1896, March 2, 1897, and March 15, 1898. This restriction was suspended, during the existing war with Spain, by the act of June 7, 1898 (30 Stat. 434), and subsequent enactments of similar character.

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CONTRACTS AND PURCHASES.

826. *Formal contracts.*—Hereafter whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Chief of Ordnance, or by officers under him authorized to make them, and are in excess of five hundred dollars in amount, such contracts shall be reduced to writing and signed by the contracting parties with their names at the end thereof. In all other cases contracts shall be prepared under such regulations as may be prescribed by the Chief of Ordnance.[1] *Act of Mar. 23, 1910 (36 Stat. 261).*

827. *Purchases of steel.*—No contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertisement. *Act of Feb. 24, 1891 (26 Stat. 769).*

828. *Material for cartridge bags.*—When, in the opinion of the Secretary of War, it is necessary to purchase material abroad for the manufacture of sacks for artillery cartridges, it shall be admitted free of duty.[2] *Act of Mar. 15, 1898 (30 Stat. 326).*

829. *Articles involving secret process, etc.*—Whenever proposals are invited for the furnishing of articles of ordnance property, the character of which or the ingredients thereof are of such a nature that the interests of the public service would be injured by publicly divulging them, the Chief of Ordnance is authorized to purchase such articles in such manner as he may deem most economical and efficient. *Act of May 11, 1908 (35 Stat. 125).*

830. *For other Departments.*—Whenever the Ordnance Department, under existing regulations, procures stores for other Executive Departments or bureaus, including the Philippine government, its appropriations shall be applicable to defray the necessary expenses in connection with the procurement, subject to reimbursement from time to time, or on completion of the work, from the department or bureau for which the stores were procured.[3] *Act of June 12, 1906 (34 Stat. 258).*

831. *Various ordnance appropriations.*—Hereafter the appropriations "Ordnance-stores ammunition," "Small-arms target practice," and "Ordnance stores and supplies" shall be available for two years

[1] This act amends section 3744, Revised Statutes, so far as it affects the Ordnance Department. (See under chapter "Contracts and purchases," par. 1211, post.)

[2] The annual appropriation act for the fiscal year ending June 30, 1911, contains the following provision (act of June 23, 1910, 36 Stat. 599): "All material purchased under the provisions of this act shall be of American manufacture, except in cases when, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases in limited quantities abroad, which material shall be admitted free of duty."

[3] See also act of August 24, 1912 (37 Stat. 589), par. 842, post.

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to procure the stores authorized by them. *Act of Mar. 2, 1907 (34 Stat. 1175).*

832. *Disbursements.*—Hereafter whenever pressing obligations are required to be paid by a disbursing officer of the Ordnance Department and there is an insufficient balance to his official credit under the proper appropriation or appropriations for the purpose, he is authorized to make payment from the total available balance to his official credit, provided sufficient funds under the proper appropriation or appropriations have been allotted by the Chief of Ordnance for the expenditure. When such disbursements are made the accounts of the disbursing officer shall show the charging of the proper appropriations, the balances under which will be adjusted by the disbursing officer on receipt of funds or by the accounting officers of the Treasury. *Act of Mar. 3, 1909 (35 Stat. 750).*

(For similar provision relative to the disbursing officers of the Quartermaster's Department, see paragraph 523.)

PROPERTY ACCOUNTABILITY.

833. *Reports to Secretary of War.*—The Chief of Ordnance shall, half yearly, or oftener if so directed, make a report to the Secretary of War of all the officers and enlisted men in his department of the service, and of all ordnance and ordnance stores under his control.[1] *Sec. 1167, R. S.*

834. *Semiannual returns.*—Every officer of the Ordnance Department, * * * every post ordnance-sergeant, each keeper of magazines, arsenals, and armories, every assistant and deputy of such, and all other officers, agents, or persons who shall have received or may be entrusted with any stores or supplies, shall * * * [semiannually], or oftener if so directed, and in such manner and on such forms as may be directed or prescribed by the Chief of Ordnance, make true and correct returns to the Chief of Ordnance of all ordnance arms, ordnance stores, and all other supplies and property of every kind received by or entrusted to them and each of them, or which may in any manner come into their and each of their possession or charge. *Sec. 1167, R. S., as amended by Act of Feb. 25, 1903 (32 Stat. 885).*

835. *Same—Regulations.*—The Chief of Ordnance, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his department a system of rules and regulations for the government of the Ordnance Department, and of all persons in said department, and for the safe-keeping and preservation of all ordnance property of every kind, and to direct and pre-

[1] Since the amendment of this section by the act of February 27, 1877, the annual report as now rendered by the Chief of Ordnance takes the place of the old reports rendered under this section.

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scribe the time, number, and forms of all returns and reports, and to enforce compliance therewith.[1] *Sec. 1167, R. S., as amended by the Act of Feb. 27, 1877 (19 Stat. 242).*

836. *Reports of damages.*—Every officer commanding a regiment, corps, garrison, or detachment shall make, once every two months, or oftener if so directed, a report to the Chief of Ordnance stating all damages to arms, equipments, and implements belonging to his command, noting those occasioned by negligence or abuse, and naming the officer or soldier by whose negligence or abuse the said damages were occasioned.[2] *Sec. 1220, R. S.*

SALES OF OBSOLETE AND UNSERVICEABLE MATERIAL.

837. *Powder and shot.*—The Secretary of War is hereby authorized, in his discretion, to exchange the unserviceable and unsuitable powder and shot on hand for new powder and projectiles, or to sell the same and purchase similar articles with the proceeds of the sales; and he shall make statement of his action under this provision in his next annual report. *Act of Mar. 3, 1881 (21 Stat. 468).*

838. *Proceeds.*—The Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale according to law. * * * And in the case of the sale of like materials in the War Department, the proceeds of which shall be turned into the Treasury, an amount equal to the net proceeds of such sale is hereby appropriated for the purpose of procuring a supply of material adapted in manufacture and caliber to the present wants of the war service: And there shall be expended in the War Department, under this provision, not more than seventy-five thousand dollars in any one year.[3] *Act of Mar. 3, 1875 (18 Stat. 388).*

839. *To patriotic organizations.*—The Chief of Ordnance is hereby authorized to sell without advertisement to patriotic organizations for military purposes surplus obsolete small arms and their equipments and ammunition at such prices as he may deem reasonable and just: *Provided*, That hereafter obsolete small arms and their equipment and ammunition shall not be disposed of to such organizations except as provided for in this Act. *Sec. 14, Act of May 28, 1908 (35 Stat. 443).*

840. *Obsolete cannon, etc.*—The Chief of Ordnance is hereby authorized to sell without advertisement for public parks, public build-

[1] For statutory provisions on the subject of property returns, see the act of Mar. 29, 1894 (28 Stat. 42); see also the chapter entitled The Public Property.

[2] While this section has not been expressly repealed, yet the semiannual returns and survey reports are the only reports now made.

[3] For rules respecting the disposition of damaged stores or stores that are unsuitable for the public service, see the chapter entitled The Public Property; for rules as to the disposition of the proceeds of the sale of condemned property, see the chapter entitled The Treasury Department.

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ings, and soldiers' monuments purposes surplus obsolete brass or bronze cannon, carriages, and cannon balls at such prices as he may deem reasonable and just: *Provided*, That hereafter obsolete brass or bronze cannon and their accessories shall not be disposed of for such purposes except as provided for in this act.[1] *Sec. 47, Act of Mar. 4, 1909 (35 Stat. 1075).*

841. *For experimental purposes.*—That the Secretary of War and the Secretary of the Navy are hereby authorized to sell to projectors of methods of conversion, for experimental purposes only, any smooth-bore cannon on hand required by them, at prices which shall not be less than have been received from auction sales for such articles, and deliver the same at the cost of the Government, at the nearest convenient place for shipment or public transportation; the cost of delivery to be deducted from the proceeds of sales, and the balance to be covered into the Treasury of the United States. *Sec. 3, Act of July 5, 1884 (23 Stat. 159).*

SALES OF SERVICEABLE PROPERTY.

842. *To bureaus and departments.*—Hereafter when authorized transfers or sales of ordnance or ordnance stores are made to another bureau of the War Department, or to another executive department of the Government, payment therefor shall be made by the proper disbursing officer of the bureau, office, or department concerned. When the transaction is between two bureaus of the War Department, the price to be charged shall be the cost price of the stores, including the cost of inspection. When the transaction is between the Ordnance Department and another executive department of the Government, the price to be charged shall include the cost price of the stores and the costs of inspection and transportation.[2] *Act of Aug. 24, 1912 (37 Stat. 589).*

843. *Sales of ordnance property.*—Articles of ordnance property may be sold by the Chief of Ordnance to officers of the Navy and Marine Corps, for their use in the public service, in the same manner as these articles are now sold to officers of the army. *Act of Mar. 3, 1909 (35 Stat. 751).*

844. *To civilian employees and Red Cross.*—Sales of ordnance stores are authorized to civilian employees of the army and to The American National Red Cross under such regulations as may be prescribed by the Secretary of War. *Id., 750.*

845. *For sentimental reasons; collections from carriers.*—Hereafter moneys arising from deductions made from carriers on account of the loss of or damage to military stores in transit shall be credited

[1] The provision here referred to is that "no expense shall be incurred by the United States in the delivery of the same."

[2] There is no general statute governing the transfer or sale of government property from one department to another. However, see pars. 619 and 671, A. R., 1913, covering the transfer of War Department property, and par. 907, Dig. Ops., J. A. G., 1912, and 17 Ops. Atty. Gen. 480, to the effect that "the transfer of public property from one bureau or department to another *is not regarded as a sale.*"

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to the proper appropriation or funds out of which such or similar stores shall be replaced and individual pieces of United States armament which are not needed on account of historical value, and can be advantageously replaced, may be sold at a price not less than their cost price, when there exist for such sale sentimental reasons adequate in the judgment of the Secretary of War or Secretary of the Navy. *Act of Mar. 2, 1905 (33 Stat. 840).*

846. *Proceeds available to replace stores.*—Hereafter all moneys arising from disposition authorized by law and regulation of serviceable ordnance and ordnance stores shall constitute one fund on the books of the Treasury Department, which shall be available to replace ordnance and ordnance stores throughout the fiscal year in which the disposition was effected and throughout the following year. The Secretary of War is hereby authorized to sell to American designers such serviceable ordnance and ordnance stores as may be necessary in the development of designs which may be used in the military service: *Provided*, That such ordnance and ordnance stores can be spared for the purpose, and funds arising from such sales shall be available to replace like ordnance and ordnance stores. *Act of Apr. 23, 1904 (33 Stat. 276).*

847. *Issues to other Executive Departments.*—Upon the request of the head of any Department, the Secretary of War be, and he hereby is, authorized and directed to issue arms and ammunition whenever they may be required for the protection of the public money and property, and they may be delivered to any officer of the Department designated by the head of such Department, to be accounted for to the Secretary of War, and to be returned when the necessity for their use has expired. Arms and ammunition heretofore furnished to any Department by the War Department, for which the War Department has not been reimbursed, may be receipted for under the provisions of this act.[1] *Act of Mar. 3, 1879 (20 Stat. 412).*

848. *Freight on issues.*—No part of the appropriations made for the Ordnance Department shall be used in payment of freight charges on ordnance or ordnace stores issued by said department. *Act of Mar. 2, 1901 (31 Stat. 910).*

LOANS AND GRATUITOUS ISSUES.

849. *To municipal corporations, etc.*—The Secretary of War and the Secretary of the Navy are each hereby authorized, in their discretion, to loan or give to soldiers' monument associations, posts of the

[1] Section 2 of the Act of May 18, 1898 (30 Stat. 419), authorized the Secretary of War and general officers commanding troops in Cuba to make certain issues of arms, ammunition, equipments, etc., to the Cuban people during the existence of the War with Spain.

[2] There is no general statute governing the transfer or sale of government property from one department to another. However, see pars. 619 and 671, A. R., 1913, covering the transfer of War Department property, and par. 907, Dig. Ops., J. A. G., 1912, and 17 Ops. Atty. Gen. 480, to the effect that "the transfer of public property from one bureau or department to another *is not regarded as a sale.*"

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Grand Army of the Republic, and municipal corporations condemned ordnance, guns, and cannon balls which may not be needed in the service of either of said Departments. Such loan or gift shall be made subject to rules and regulations covering the same in each Department, and the Government shall be at no expense in connection with any such loan or gift. *Act of May 22, 1896 (29 Stat. 133).*

850. *To Homes for Disabled Volunteers.*—The Chief of Ordnance is authorized to issue such obsolete ordnance, gun carriages, and ordnance stores, as may be needed for ornamental purposes, to the Homes for Disabled Volunteer Soldiers, the Homes to pay for transportation and such other expenses as are necessary.[1] *Act of Mar. 3, 1899 (30 Stat. 1073).*

851. *Tests of rifled cannon.*—That hereafter all rifled cannon of any particular material, caliber, or kind, made at the cost of the United States, shall be publicly subjected to the proper test, including such rapid firing as a like gun would be likely to be subjected to in actual battle, for the determination of the endurance of the same to the satisfaction of the President of the United States or such persons as he may select; and he is hereby authorized to select not to exceed five persons, who shall be skilled in such matters; and if such gun shall not prove satisfactory, they shall not be put to use in the Government service. *Sec. 2, Act of July 5, 1884 (23 Stat. 159).*

852. *Caliber determinations.*—It shall be the duty of the Secretary of War to cause the various calibers, lengths of bore, greatest and least admissible weights of guns for each caliber, together with the greatest and least weights of projectiles for each caliber, of all the various calibers required for the service, together with the number of each caliber of gun required to be determined, and to make the same known to manufacturers of ordnance on their application and to report the same to Congress at its next session for its approval. *Sec. 1, id.*

ARMORIES AND ARSENALS.

853. *Armories—Officers and workmen.*—At each arsenal there shall be established a national armory, in which there shall be employed one superintendent, who shall be an officer of the Ordnance Department, to be designated by the President; one master-armorer, who shall be appointed by the President, and as many workmen as the Secretary of War may, from time to time, deem necessary. *Sec. 1662, R. S.*

854. *Same—Compensation.*—The ordnance officer in charge of any national armory shall receive no compensation other than his regu-

[1] For similar loans, gifts, and issues of ordnance to National Military Park, see the chapter entitled National Parks. For issues to colleges, see the title Details to Colleges in the chapter entitled Commissioned Officers.

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lar pay as an officer of the corps; the master-armorers shall receive fifteen hundred dollars per annum each; the inspectors and clerks, each, eight hundred dollars per annum, except the clerks of the armory at Springfield, Massachusetts, who shall receive sixteen hundred and fifty dollars per annum. *Sec. 1663, R. S.*

855. *Same—Annual account of expenses.*—An annual account of the expenses of the national armories shall be laid before Congress, together with an account of the arms made and repaired therein. *Sec. 1665, R. S.*

856. *Same—Useless arsenals.*—The Secretary of War is authorized to abolish such of the arsenals of the United States as, in his judgment, may be useless or unnecessary. *Sec. 1666, R. S.*

EMPLOYEES OF ARSENALS, ETC.

857. *Leaves of absence.*—Each and every employee of the navy-yards, gun factories, naval stations, and arsenals of the United States Government be, and is hereby, granted fifteen working days' leave of absence each year without forfeiture of pay during such leave: *Provided*, That it shall be lawful to allow pro rata leave only to those serving twelve consecutive months or more: *And provided further*, That in all cases the heads of divisions shall have discretion as to the time when the leave can best be allowed without detriment to the service, and that absence on account of sickness shall be deducted from the leave hereby granted. *Act of Feb. 1, 1901 (31 Stat. 746).*

858. *Penalty for certain offenses.*—If any artificer or workman, hired, retained, or employed in any public arsenal or armory, wantonly and carelessly breaks, impairs, or destroys any implements, tools, or utensils, or any stock, or materials for making guns, the property of the United States, or willfully and obstinately refuses to perform the services lawfully assigned to him, pursuant to his contract, he shall forfeit a sum not exceeding twenty dollars for every such act of disobedience or breach of contract, to be recovered in any court having competent jurisdiction thereof. *Sec. 1669, R. S.*

859. *Enticing away workmen—Penalty.*—Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both. *Sec. 43, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1097).*

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860. *Exemption from jury service.*—All artificers and workmen employed in the armories and arsenals of the United States shall be exempted, during their time of service, from service as jurors in any court. *Sec. 1671, R. S.*

861. *Appropriations; apportionment of expenses.*—The Chief of Ordnance, in conducting manufacturing or similar operations, is authorized to charge any indirect or general expense for labor or material therefor against any of the appropriations authorizing these operations in such manner as is most economical and efficient, provided that the methods adopted shall show that each of such appropriations bears its ratable share of the total amount of these expenses. *Act of Mar. 2, 1907 (34 Stat. 1062).*

862. *Same—Replacing materials.*—The Chief of Ordnance, in conducting manufacturing or similar operations under any particular appropriation heretofore or hereafter made, is authorized to use material procured under any appropriation and to replace the same in kind or otherwise: *Provided*, That in doing so the methods shall be such that each appropriation will be charged with the full value of the material used in carrying out its object. *Act of Mar. 4, 1911 (36 Stat. 1344).*

INVENTIONS.

863. *Patents without fee.*—The Secretary of the Interior and the Commissioner of Patents are authorized to grant any officer of the Government, except officers and employees of the Patent Office, a patent for any invention of the classes mentioned in section forty-eight hundred and eighty-six[1] of the Revised Statutes, when such invention is used or to be used in the public service, without the payment of any fee: *Provided*, That the applicant in his application shall state that the invention described therein, if patented, may be used by the Government or any of its officers or employees in the prosecution of work for the Government, or by any other person in the United States, without the payment to him of any royalty thereon, which stipulation shall be included in the patent.[2] *Act of Mar. 3, 1883 (22 Stat. 625).*

[1] This section of the general patent law states what inventions are patentable.

[2] Where claimants seek to recover a royalty for the use of a patented device, they must show a contract, express or implied. Where on a claim for royalty it appears that the Government at no time recognized a right in the patentees or acknowledged a responsibility, it must be held that no contract exists. (Russell and Livermore *v.* U. S., 35 Ct. Cls., 154.) A contract to pay is implied whenever the Government, acting through a competent agent, takes or uses individual property, acknowledging explicitly or tacitly that the property is individual property. (Schillinger *v.* U. S., 24 Ct. Cls., 278; 155 U. S., 163; Berdan's Case, 25 Ct. Cls., 355; 26 id., 43; 30 id., 491; 156 U. S., 552.)

Section 1673 of the Revised Statutes contained the requirement that "no royalty shall be paid by the United States to any of its officers or employees for the use of any patent for the system, or any part thereof, mentioned in the preceding section, nor for any such patent in which said officers or employees may be directly or indirectly interested." The preceding section referred to the Springfield breech-loading system.

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864. *Rewards to employees.*—The Secretary of War is hereby authorized to offer periodically at such of the establishments of the Ordnance Department as he may select a cash reward for the suggestion, or series of suggestions, for an improvement or economy in manufacturing processes or plant, submitted within the period by one or more employees of the establishment which shall be deemed the most valuable of those submitted and adopted for use: *Provided*, That to obtain this reward the winning suggestion must be one that will clearly effect a material economy in production or increase efficiency or enhance the quality of the product in comparison with its cost and in the opinion of the Secretary shall be so worthy as to entitle the employee making the same to receive the reward: *Provided further*, That the sums awarded to employees in accordance with this Act shall be paid them in addition to their usual compensation and shall constitute part of the general or shop expense of the establishment: *Provided further*, That the total amount paid under the provisions of this Act shall not exceed one thousand dollars for any one month: *And provided further*, That no employee shall be paid a reward under this Act until he has properly executed an agreement to the effect that the use by the United States of the suggestion, or series of suggestions, made by him shall not form the basis of a further claim of any nature upon the United States by him, his heirs, or assigns, and that application for patent has not been made for the invention. *Act of July 17, 1912* (*37 Stat. 193*).

865. *Prohibited expenditures.*—Hereafter no money shall be expended at said armories in the perfection of patentable inventions in the manufacture of arms by officers of the Army otherwise compensated for their services to the United States.[1] *Act of Mar. 3, 1875* (*18 Stat. 455*).

BOARD FOR TESTING IRON AND STEEL.

866. *Appointment of board—Testing machine.*—For experiments in testing iron and steel, including the cost of any machine built for

[1] Where a skilled mechanic in the Government employment, in the ordinary course of his employment, with the aids furnished by the Government and the suggestion and advice of his superior officer, produces a device upon which a patent is issued, he can not recover for its use by the Government. (Eager *v.* U. S., 35 Ct. Cls., 556; Solomon's Case, 21 id., 479; Gill's Case, 22 id., 335; 25 id., 415.) When not specifically employed for the purpose, if he makes an invention he is entitled to the benefits of the same. (U. S. *v.* Burns, 12 Wal., 246; Solomons *v.* U. S., 21 Ct. Cls., 479–83, and 22 id., 335; Solomons *v.* U. S., 137 U. S., 346; Gill *v.* U. S., 160 U. S., 426; Gill *v.* U. S., 25 Ct. Cls., 415; McAleer *v.* U. S., 150 U. S., 424; and Eager *v.* U. S., 35 Ct. Cls., 556–568.) See, however, act of June 25, 1910 (36 Stat. 851), which authorizes a suit against the United States for infringement of patent rights with the proviso that the act shall not "apply to any device discovered or invented" by an employee of the United States, "during the time of his employment or service." While no suit for infringement can be brought under the statute in respect to such device, the statute stops short of changing the law as above stated.

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such purpose, the sum of fifty thousand dollars is hereby appropriated; and the further sum of twenty-five thousand dollars provided "for improved machinery and instruments for testing American iron and steel" in the act entitled "An act making appropriations for the support of the Army for the year ending June thirtieth, eighteen hundred and seventy-four," approved March third, eighteen hundred and seventy-three, is hereby continued and made available for such purpose; and that the President be, and hereby is, authorized to appoint a board, to consist of one officer of the Engineers of the United States Army, one officer of ordnance of the United States Army, one line officer of the United States Navy, one engineer of the United States Navy, and three civilians, who shall be experts; and it shall be the duty of said board to convene at the earliest practicable moment, at such place as may be designated by the President, for the purpose of determining, by actual tests, the strength and value of all kinds of iron, steel, and other metals which may be submitted to them or by them produced, and to prepare tables which will exhibit the strength and value of said materials for constructive and mechanical purposes, and to provide for the building of a suitable machine for establishing such tests. *Sec. 4, Act of Mar. 3, 1875 (18 Stat. 399).*

867. *Same—Compensation.*—No officers in the pay of the Government shall be entitled to, or receive, any additional compensation by reasons of any services rendered in connection with this board; but one of the civil experts shall act as secretary of the board, and shall be entitled, under this act, to such compensation as the President may deem proper and fit: *Provided*, That not more than fifteen thousand dollars of the sum herein provided shall be used for the expenses of such board.[1] *Id.*

868. *Tests for private parties; fees.*—The Secretary of War is hereby authorized to cause the machine built for testing iron and steel to be set up and applied to the testing of iron and steel for all persons who may desire to use it, upon the payment of a suitable fee for each test; the table of fees to be approved by the Secretary of War, and to be so adjusted from time to time as to defray the actual cost of the tests as near as may be. *Act of June 20, 1878 (20 Stat. 223).* That hereafter the tests of iron and steel and other materials for industrial purposes shall be continued, and report thereof shall be made to Congress. *Act of Mar. 3, 1885 (23 Stat. 502).*

869. *Same—Use of funds.*—In making tests for private citizens the officer in charge may require payment in advance, and may use the funds so received in making such private tests, making full report

[1] The act of March 3, 1873 (17 Stat. 543), contained an appropriation of $25,000 for "improved machinery and instruments for testing American iron and steel."

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thereof to the Chief of Ordnance; and the Chief of Ordnance shall give attention to such programme of tests as may be submitted by the American Society of Civil Engineers, and the record of such tests shall be furnished said society to be by them published at their own expense.[1] *Act of June 30, 1882 (22 Stat. 122).*

BOARD OF ORDNANCE AND FORTIFICATION.

870. *Organization—Duties.*—A board to consist of the commanding General of the Army, an officer of Engineers, an officer of Ordnance, and an officer of Artillery, to be selected by the Secretary of War, to be called and known as the Board of Ordnance and Fortification; and said Board shall be under the direction of the Secretary of War and subject to his supervision and control in all respects, and shall have power to provide suitable regulations for the inspection of guns and materials at all stages of manufacture to the extent necessary to protect fully the interests of the United States, and generally to provide such regulations concerning matters within said Board's operations as shall be necessary to carry out to the best advantage all duties committed to its charge. *Act of Sept. 22, 1888 (25 Stat. 489).*

871. *Additional member.*—One additional member shall be added to the said Board of Ordnance and Fortification, who shall be an artillery officer of technical ability and experience, to be selected by the Secretary of War. *Act of Mar. 1, 1901 (31 Stat. 875).*

872. *Same.*—The Secretary of War is hereby authorized to appoint two additional members for the Board of Ordnance and Fortification, both of whom shall be selected from the Artillery Corps. *Act of Mar. 2, 1901 (31 Stat. 910).*

873. *Additional civilian member.*—One additional member shall be added to said Board of Ordnance and Fortification who shall be a civilian and not an exofficer of the Regular Army or Navy, and he shall be nominated by the President, and, by and with the advice and consent of the Senate, appointed, and shall be paid a salary of five thousand dollars per annum and actual traveling expenses when traveling on duty. *Act of Feb. 24, 1891 (26 Stat. 769).*

874. *Member interested in device.*—Hereafter no person shall be a member of or serve on said Board who has been or is in any manner interested in any invention, device, or patent which, or anything similar to which, has been considered or may be considered by or come before said Board for test or adoption; or who is connected with or in the employ of any manufacturer who has or shall have contracts with the United States for any ordnance materials. *Act of Feb. 18, 1893 (27 Stat. 461).*

[1] The acts of March 3, 1883 (22 Stat. 460), July 5, 1884 (23 Stat. 112), and March 3, 1885 (23 Stat. 502), contain a similar provision.

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875. *Investigations and tests.*—To enable the board to make all needful and proper purchases, investigations, experiments, and tests, to ascertain, with a view to their utilization by the Government, the most effective guns, small arms, cartridges, projectiles, fuzes, explosives, torpedoes, armor plates, and other implements and engines of war; and to purchase or cause to be manufactured, under authority of the Secretary of War, such guns, carriages, armor plates, and other war material as may, in the judgment of said Board, be necessary in the proper discharge of the duty herein devolved upon it by the act approved September twenty-second, eighteen hundred and eighty-eight.[1] * * * [appropriated] one hundred thousand dollars. *Act of May 25, 1900 (31 Stat. 186).*

[1] The act of September 22, 1888 (25 Stat. 489), restricts the expenditures of the board in respect to the investigations, tests, experiments, etc., which may be carried on under its direction under that statute, by the requirement that "the amount expended and liabilities incurred in such purchases, investigations, experiments, and tests shall not exceed five hundred thousand dollars, which sum is hereby appropriated"; and that "said board shall test, and if found satisfactory, shall purchase two breech-loading field guns of three and two-tenths inch bore of aluminum bronze."

By several acts of appropriation the powers of the Board of Ordnance and Fortification have been reduced and defined. By the act of February 24, 1891 (26 Stat. 767), the appropriations of the Engineer Department for gun and mortar batteries and for sites of fortifications have been withdrawn from the supervision of the board; by the act of July 23, 1892 (27 Stat. 260), all regular appropriations of the Ordnance Department for the armament of fortifications were similarly withdrawn from its supervision. See, also, the acts of February 18, 1893 (27 Stat. 461), August 1, 1894 (28 id., 215), March 2, 1895 (id., 706), and June 6, 1896 (29 id., 259), for similar provisions of statutes in which the board is specially charged with the supervision of stated funds and with the general expenditure of funds appropriated for experimental purposes.

The act of March 2, 1889 (25 Stat. 833), conferred authority upon the Board of Ordnance and Fortification "to examine and report upon a site or sites for ordnance testing and proving ground to be used in the testing and proving of heavy ordnance, having in view in the selection of said site or sites their accessibility by land and water, means of transportation, and suitability for the purpose intended, and also the actual and reasonable cost, and value of the land embraced in said site or sites and the least sum for which the same can be procured. Said board shall report thereon to the Secretary of War, to be submitted to Congress at its next session; and in case the said board shall select a site or sites and recommend their purchase, the Secretary of War is hereby authorized to secure written proposals for the sale of the land so recommended, until such time as Congress may act upon the recommendation of said board and of the Secretary of War."

To enable the Secretary of War, in his discretion, to purchase the land adjoining the Government reservation at Sandy Hook, New Jersey, now belonging to the grantees of the Highland Beach Association of New Jersey, together with the right of way from said land to the main line of the Central Railroad Company of New Jersey, together with the rails, ties, switches, and all the railroad equipment on said lands, twenty-five thousand dollars, or so much thereof as may be necessary. (Act of July 23, 1892, 27 Stat. 259.)

That the President is hereby authorized to appoint a board, to consist of three officers of the Army and three officers of the Navy, who shall examine and report to the Secretary of War, for transmission to Congress for its consideration, what, in their opinion, is the most suitable site on the Pacific coast, or on the rivers or other waters thereof, for the erection of a plant for finishing and assembling the parts of heavy guns and other ordnance for the use of the Army and Navy. That for the payment of the necessary expenses of the board to be appointed under the foregoing provisions the sum of two thousand five hundred dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated. (Act of July 23, 1892, 27 Stat. 258.)

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876. *Right to use inventions.*—Before any money shall be expended in the construction or test of any gun, gun carriage, ammunition, or implements under the supervision of the said Board, the Board shall be satisfied, after due inquiry, that the Government of the United States has a lawful right to use the inventions involved in the construction of such gun, gun carriage, ammunition, or implements, or that the construction or test is made at the request of a person either having such lawful right or authorized to convey the same to the Government. *Act of Aug. 1, 1894 (28 Stat. 215).*

877. *Expenses of board.*—For payment of the necessary expenses of the Board, including a per diem allowance to each officer detailed to serve thereon when employed on duty away from his permanent station, of two dollars and fifty cents a day, * * * thousand dollars.[1] *Act of July 23, 1892 (27 Stat. 260).*

878. *Appropriation—Expenditure.*—For the test of experimental guns, carriages, and other devices procured in accordance with the recommendation of the Board of Ordnance and Fortification, * * * dollars, the expenditure of which shall be made by the several bureaus of the War Department heretofore having jurisdiction of the same, or by the board itself, as the Secretary of War may direct. *Act of Mar. 3, 1909 (35 Stat. 732).*

HISTORICAL NOTE.

The duties in connection with the procurement, manufacture, and supply of cannon, small arms, and military stores, now performed by the Ordnance Department, seem to have been vested during the Revolutionary period in a purveyor of public supplies, an office created by Congress, which ceased to exist at the close of the war. With a view to secure proper accountability and a more efficient administration in this branch of the military service, President Washing-

[1] For a similar provision see the acts of February 24, 1891 (26 Stat. 768); July 23, 1892 (27 Stat. 259); February 18, 1893 (27 Stat. 460); March 2, 1895 (28 Stat. 706), and June 6, 1896 (29 Stat. 259). The several acts of appropriation since that of July 23, 1892, contain provisions for similar allowances to each officer detailed to serve on the Board of Ordnance and Fortification when on duty away from his permanent station. The acts of appropriation since that of August 4, 1894, contain provisions for the necessary traveling expenses of the civilian member of the board when traveling on duty as contemplated in the act of February 24, 1891.

This provision has appeared in all subsequent acts of appropriation. An officer who is authorized to receive compensation "while necessarily employed" only, must produce satisfactory evidence of his employment, and of the necessity therefor, during the period for which he claims compensation. (4 Comp. Dec., 424.) The Auditor is authorized, and it is his duty, to require the production of satisfactory evidence of the time of actual employment of an officer who is paid a per diem compensation or allowance. (Id., 479.)

The mileage of officers of the Army traveling on duty connected with the Board of Ordnance and Fortification is payable from the appropriation made for the board as a part of the necessary expenses incident to the performance of the work. (3 id., 382.) Officers of the Army connected with the Board of Ordnance and Fortification, when traveling on duty, should be furnished with transportation in kind by the Quartermaster's Department, in accordance with War Department Circular No. 8, of 1897, but whether the requests for transportation addressed to the railroad companies should be issued by the officers of the Quartermaster's Department exclusively is to be determined by the Secretary of War. (Id., 590.)

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ton, on January 7, 1794, recommended to Congress that the office of Purveyor of Public Supplies be created and charged "with the duties of receiving, safe-keeping, and distributing the public supplies." The office thus recommended was established by the act of February 23, 1795 (1 Stat.419), and continued to exist until May 31, 1812, when, its duties having been transferred to the several departments of the staff, it was abolished. (Sec. 9, act of Mar. 28, 1812, 2 id., 696.)

The Ordnance Department, *eo nomine*, was established by the act of May 14, 1812 (id., 732), and was to consist of one Commissary General of Ordnance, an assistant commissary general, four deputy commissaries, and as many assistant deputy commissaries, not exceeding eight, as the President might deem necessary. The Commissary General of Ordnance was to have the rank and pay of colonel, the assistant commissary general that of lieutenant colonel, the deputy commissaries that of major, and the assistant deputy commissaries that of captain. By the act of February 8, 1815 (3 id., 203), the department was reorganized, its duties were defined, and its strength fixed at one colonel, one lieutenant colonel, two majors, ten captains, ten first lieutenants, and as many enlisted men, to serve as armorers, blacksmiths, wheelwrights, artificers, etc., as the Secretary of War might deem necessary; by the same enactment the supervision of the several armories, magazines, and arsenals was vested in the Ordnance Department.

By section 4 of the act of March 2, 1821 (3 id., 283), the Ordnance Department was merged in the artillery, one captain being added to each regiment of artillery for ordnance duty. Although the department ceased to exist, for the time, as a separate establishment, the duties pertaining to the ordnance service seem to have continued to be performed by officers of artillery detailed for the purpose. By the act of April 5, 1830 (4 id., 504), the Ordnance Department was reconstituted, with the following commissioned strength: One colonel, one lieutenant colonel, two majors, ten captains, with the pay and allowances of artillery officers of corresponding grades, and as many enlisted men as might be required, not to exceed 250. By section 2 of the act of April 5, 1830, the grade of ordnance sergeant was established, the number authorized to be appointed being restricted to one for each military post. By section 13 of the act of July 5, 1838 (5 id., 256), the President was authorized to add two majors to the department "when he may deem it expedient to increase the same;" he was also authorized to transfer ten first lieutenants and ten second lieutenants to the department from the artillery; by the act of July 7, 1838 (id., 308), the number of lieutenants thus authorized to be transferred was reduced to twelve. The act of July 5, 1838, placed officers of ordnance on the same footing in respect to pay and allowances as officers of dragoons. By section 16 of the act of March 3, 1847 (9 id., 184), the President was authorized to add to the department, under the conditions set forth in the statute last cited, two captains and six first lieutenants. By section 3 of the act of August 3, 1861 (12 id., 287), a chief of ordnance, with the rank and pay of Quartermaster General (brigadier general), one colonel, one lieutenant colonel, and six second lieutenants were added to the establishment. By section 4 of the act of March 3, 1863 (id., 743), one lieutenant colonel, two majors, eight captains, and eight first lieutenants were added; the appointments to be made by promotion "as far as the present Ordnance Corps will permit, and the residue to be appointed by transfer from other regiments and corps of the Army;" by this statute examinations were required in all grades below that of field officer as a condition precedent to promotion.

By section 21 of the act of July 28, 1866 (14 id., 335), the peace strength of the department was fixed at one brigadier-general, three colonels, four lieutenant-colonels, ten majors, twenty captains, sixteen first lieutenants, and ten second lieutenants; sixteen ordnance storekeepers were also added to the establishment. Section 6 of the act of March 3, 1869 (15 id., 318), contained the requirement that there should be no promotions or appointments in the several staff corps until otherwise directed by law; but this restriction was removed as to the Ordnance Department by the act of June 23, 1874 (18 id., 244), which reorganized the department with an authorized strength of one brigadier-general, three colonels, four lieutenant-colonels, ten majors, twenty captains, and sixteen first lieutenants, and provided that all vacancies in the grade of first lieutenant should be filled by transfer from the line of the Army, subject to the examination therein prescribed. The examination for promotion, first required by the act of March 3, 1863, was extended in its scope by the act of June 23, 1874, so as to require that "no appointment or promotion in said department shall hereafter be made until the officer so appointed or promoted shall have passed a satisfactory examination before a board of ordnance officers senior to himself." By the act of July 7, 1898 (30 Stat. 720), the composition

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of the Ordnance Department was fixed at one brigadier-general, four colonels, five lieutenant-colonels, twelve majors, twenty-four captains, and twenty first lieutenants.

By section 23 of the act of February 2, 1901 (31 Stat. 754), the strength of the Ordnance Department was fixed at one chief of ordnance with the rank of brigadier-general, four colonels, six lieutenant-colonels, twelve majors, twenty-four captains, and twenty-four first lieutenants, together with the enlisted men, including ordnance-sergeants, already authorized by law. A system of details was also provided by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Ordnance Department.

By act of June 25, 1906 (34 Stat. 455), the strength of the Ordnance Department was fixed at one Chief of Ordnance with the rank of brigadier-general, six colonels, nine lieutenant-colonels, nineteen majors, twenty-five captains; twenty-five first lieutenants; and the enlisted men authorized by the existing law, and it was provided that details thereto may be made from the Army at large "from the grade in which the vacancy exists or from the grade below," subject to the limitations prescribed therein. And by the act of March 3, 1909 (35 Stat. 751) the rank of officers serving by detail in the Ordnance Department in their respective grades was referred to the "dates of their rank under the original detail in said grades."

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CHAPTER XXII.

THE SIGNAL CORPS.

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879. *Organization.*—The Signal Corps shall consist of one Chief Signal Officer with the rank of brigadier-general, one colonel, one lieutenant-colonel, four majors, fourteen captains, fourteen first lieutenants,[1] eighty first-class sergeants, one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks. *Sec. 24, Act of Feb. 2, 1901 (31 Stat. 754).*

880. *Same—Increase.*—There shall be added to the Signal Corps of the Army, as now authorized by law, one lieutenant-colonel, two majors, four captains, and four first lieutenants. *Act of Mar. 2, 1903 (32 Stat. 932).*

881. *Chief of telegraph and cypher bureau.*—That the President be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, an officer of the Signal Corps as chief of the telegraph and cipher bureau of the Executive Office, who shall have, while so serving, the rank, pay, and allowances of a major.[2] *Id.*

[1] Section 24 of the act of February 2, 1901 (31 Stat. 754), contains a proviso to the effect that "vacancies created or caused by this section shall be filled by promotion of officers of the Signal Corps according to seniority, as now provided by law. Vacancies remaining after such promotions may be filled by appointment of persons who have served in the Volunteer Signal Corps since April twenty-first, eighteen hundred and ninety-eight."

[2] But one officer was ever appointed to this office, and on his retirement the office was allowed to lapse.

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882. *Appropriations for support.*—On and after July first, eighteen hundred and ninety-one, the appropriations for the support of the Signal Corps of the Army shall be made with those of other staff corps of the Army. *Sec 9, Act of Oct. 1, 1890 (26 Stat. 653).*

883. *Moneys from sales to replace supplies and equipment.*—Hereafter all moneys arising from the disposition of serviceable Signal Corps supplies and equipment, authorized by law and regulations, shall constitute one fund on the books of the Treasury Department and be available during the fiscal year in which their disposition was effected and the year following, for the replacement of Signal Corps supplies and equipment. *Act of Apr. 27, 1914 (38 Stat. 361).*

APPOINTMENTS; PROMOTIONS; DETAILS.

884. *Examinations.*—All appointments and promotions in the Signal Corps * * * shall be made after examination and approval under sections twelve hundred and six and twelve hundred and seven of the Revised Statutes, which are hereby amended so as to be applicable to and to provide for the promotion of the lieutenants of the Signal Corps in the same manner as they now apply to the Corps of Engineers and the Ordnance Corps.[1] *Sec. 7, Act of Oct. 1, 1890 (26 Stat. 653).*

885. *Promotions—Seniority.*—So long as there remain any officers holding permanent appointments in the * * * Signal Corps, including those appointed to original vacancies in the grades of captain and first lieutenant as provided in sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments. *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

886. *Same.*—The vacancies thus created or caused shall be filled first by the promotion of officers of the Signal Corps, according to seniority, and thereafter by details from the line of the Army.[2] *Act of Mar. 2, 1903 (32 Stat. 932).*

887. *Details.*—When any vacancy, except that of the chief of the department or corps, shall occur which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army.[3] *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

[1] This clause regulates the promotion, after examination, of officers holding permanent appointments in the Signal Corps.

[2] The clause relating to the transfer of officers of the line to the Signal Corps was repealed by the act of February 2, 1901. Appointments to original vacancies created or caused by that enactment are governed by the requirements of section 24 of said act of February 2, 1901.

[3] See paragraph 884.

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888. *Same.*—Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Id.*

889. *Aviation details.*—From and after the passage and approval of this Act the pay and allowances that are now or may be hereafter fixed by law for officers of the Regular Army shall be increased thirty-five per centum for such officers as are now or may be hereafter detailed by the Secretary of War on aviation duty: *Provided*, That this increase of pay and allowances shall be given to such officers only as are actual flyers of heavier than air craft, and while so detailed: *Provided further*, That no more than thirty officers shall be detailed to the aviation service: *Provided further*, That paragraph two of section twenty-six of an Act of Congress approved February second, nineteen hundred and one, entitled "An Act to increase the efficiency of the permanent military establishment of the United States," shall not limit the tour of detail to aviation duty of officers below the grade of lieutenant colonel: *Provided further*, That nothing in this provision shall be construed to increase the total number of officers now in the Regular Army. *Act of Mar. 2, 1913 (37 Stat. 705).*

ENLISTED FORCE.

890. *Composition.*—The Signal Corps shall consist of * * * eighty first-class sergeants,[1] one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks. *Sec. 24, Act of Feb. 2, 1901 (31 Stat. 754).*

891. *Same—Increase.*—Hereafter second-class privates of the Signal Corps shall be designated as privates, with the same pay and alowances as now allowed by law to second-class privates. Fifty first-class sergeants may be temporarily added to the Signal Corps for service in the Philippine Islands and Alaska; such additional force, or part thereof, to be continued only as long as in the opinion of the Secretary of War (or the President) it may be necessary for the efficiency of the Army. *Act of June 30, 1902 (32 Stat. 509).*

892. *Same—Increased in war time.*—In time of war there shall be added to the Signal Corps of the Army ten corporals and one hun-

[1] The Army appropriation act of April 23, 1904 (33 Stat. 261), made provision for an increase of the enlisted men of the Signal Corps; and the current appropriation act (act of Mar. 2, 1913, 37 Stat. 707), provides for a further increase—the number authorized being as follows:

"Forty-two master signal electricians, at $900 each; 135 first-class sergeants, at $540 each; 144 sergeants, at $36 per month each; 24 cooks, at $30 per month each; 156 corporals, at $24 per month each; 552 first-class privates, at $18 per month each; 168 privates, at $15 per month each." Provision is also made for additional pay to 12 sergeants serving as mess sergeants, at $6 per month each, and for additional pay for length of service.

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dred first-class privates, who shall have the pay and allowances of engineer troops of the same grade. *Sec. 3, Act of Apr. 26 1898 (30 Stat. 365).*

SIGNAL OFFICE.

893. *Chief Signal Officer—Duties.*—The Chief Signal Officer shall have charge, under the direction of the Secretary of War, of all military signal duties, and of books, papers, and devices connected therewith, including telegraph and telephone apparatus and the necessary meteorological instruments for use on target ranges, and other military uses; the construction, repair, and operation of military telegraph lines, and the duty of collecting and transmitting information for the Army by telegraph or otherwise, and all other duties usually pertaining to military signaling; and the operations of said corps shall be confined to strictly military matters.[1] *Sec. 2, Act of Oct. 1, 1890 (26 Stat. 653).*

894. *Same—Regulations.*—The Chief Signal Officer, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his Bureau a system of rules and regulations for the government of the Signal Bureau, and of all persons in said Bureau, and for the safe-keeping and preservation of all Signal Service property of every kind, and to direct and prescribe the kind, number, and form of all returns and reports, and to enforce compliance therewith. *Act of Oct. 12, 1888 (25 Stat. 552).*

895. *Skilled draftsmen, etc.*—The services of skilled draftsmen and such other services as the Secretary of War may deem necessary may be employed only in the Signal Office to carry into effect the various appropriations for fortifications and other works of defense, to be paid from such appropriations, in addition to the foregoing employees appropriated for in the Signal Office: *Provided*, That * * * the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed, their duties, and the amount paid to each.[2] *Act of Mar. 4, 1913 (37 Stat. 764).*

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[1] The act of October 1, 1890 (26 Stat. 653), contained the requirement that "the civilian duties now performed by the Signal Corps of the Army shall hereafter devolve upon a bureau to be known as the Weather Bureau, which, on and after July first, eighteen hundred and ninety-one, shall be established in and attached to the Department of Agriculture, and the Signal Corps of the Army shall remain a part of the Military Establishment under the direction of the Secretary of War, and all estimates for its support shall be included with other estimates for the support of the Military Establishment." Section 4 of this enactment, which authorized the detail of officers of the Signal Corps in the Weather Bureau of the Department of Agriculture, was repealed by joint resolution No. 57, of July 8, 1898 (30 Stat. 752). This enactment finally severed the statutory connection of this corps with the Weather Bureau.

[2] This provision has appeared annually in the legislative, executive, and judicial appropriation act.

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MILITARY TELEGRAPH LINES.

896. *Construction—Repair—Operation.*—The Chief Signal Officer shall have charge, under the direction of the Secretary of War, of * * * the construction, repair, and operation of all military telegraph lines.[1] *Sec. 2, Act of Oct. 1, 1890 (26 Stat. 653).*

897. *In Alaska—Commercial business.*—For the purpose of connecting headquarters, Department of Alaska, at Saint Michael, by military telegraph and cable lines with other military stations in Alaska, four hundred and fifty thousand five hundred and fifty dollars: *Provided*, That commercial business may be done over these military lines under such conditions as may be deemed, by the Secretary of War, equitable and in the public interests, all receipts from such commercial business shall be accounted for and paid into the Treasury of the United States, and that the sum hereby appropriated shall be immediately available: *Provided further*, That no telegraph or cable lines owned or operated or controlled by persons not citizens of the United States, or by any foreign corporation or government, shall be established in or permitted to enter Alaska. *Act of May 26, 1900 (31 Stat. 206).*

898. *Receipts.*—After the first day of July, eighteen hundred and eighty-three, all moneys received for the transmission of private dispatches over any and all telegraph lines owned or operated by the United States shall be paid into the Treasury of the United States, as required by section thirty-six hundred and seventeen of the Revised Statutes; and all acts or parts of acts inconsistent herewith are hereby repealed.[2] *Act of Mar. 3, 1883 (22 Stat. 616).*

899. *Betterments.*—That of the receipts of the Washington-Alaska Military Cable and Telegraph System that have been covered into the Treasury of the United States, the sum of one hundred and ninety thousand dollars be, and the same is hereby, made available until expended for defraying the cost of such extensions and betterments of the system as may be approved by the Secretary of War, the extent of such extensions and the cost thereof to be reported to

[1] The act of October 1, 1890 (26 Stat. 653), which places the Chief Signal Officer in charge of "the construction, repair, and operation of military telegraph lines," repealed the act of August 7, 1882 (22 Stat. 319), which vested the supervision of the construction and operation of military telegraph lines in department commanders.

[2] The act of March 3, 1875, contained a provision authorizing the Secretary of War "to pay the expenses of operating and keeping in repair the said telegraph lines out of any money received for dispatches sent over said lines; any balance remaining after the payment of such expenses to be covered into the Treasury as a miscellaneous receipt; the money received in any one fiscal year to be used only in payment for the expenses of that year. And a full report of the receipts and expenditures in connection with the said telegraph lines shall be made quarterly to the Secretary of War, through the Chief Signal Officer. And the Chief Signal Officer shall have the charge and control of said lines of telegraph in the construction, repair, and operation of the same."

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Congress by the Secretary of War: *Provided further*, That hereafter detailed estimates shall be submitted to Congress for any further extension of the cable or telegraph lines in the district of Alaska. *Act of Mar. 2, 1907 (34 Stat. 1159)*.

900. *Willful injury, etc.—Penalty.*—Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both. *Sec. 60, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1099)*.

901. *Property returns.*—From and after the passage of this act, every officer of the Signal Corps, every noncommissioned officer or private of the Signal Corps, and all other officers, agents, or persons who now have in possession, or may hereafter receive or may be intrusted with any stores or supplies, shall, quarterly or more often, if so directed, and in such manner and on such forms as may be prescribed by the Chief Signal Officer, make true and correct returns to the Chief Signal Officer of all Signal Service property and all other supplies and stores of every kind received by or intrusted to them and each of them, or which may, in any manner, come into their and each of their possession or charge. *Act of Oct. 12, 1888 (25 Stat. 552)*.

HISTORICAL NOTE.

The office of Signal Officer of the Army, with the rank of major of cavalry, was established by the act of June 21, 1860 (12 Stat. 66). By section 17 of the act of March 3, 1863 (id., 753), a signal corps was created to consist of a Chief Signal Officer with the rank of colonel, one lieutenant colonel, two majors who were to be inspectors, and, for each army corps or military department, one captain and as many lieutenants, not exceeding eight, as the President might deem necessary. The officers thus provided for were to receive the mounted pay of their grades, and were to continue in service during the pendency of the existing rebellion. For each officer authorized by the act of March 3, 1863, one sergeant and six privates were to be detailed from the volunteer armies, who were to receive the pay and allowances of enlisted men of engineers. Eligibility for appointment and detail were to be determined, in part, by prior faithful service in the acting signal corps, and were conditioned in all cases, upon the successful passage of a preliminary examination.

A permanent signal corps was added to the military establishment by section 22 of the act of July 28, 1866 (12 Stat. 335) (which was embodied in the Revised Statutes as sections 1165, 1166, and 1167). It was to consist of a Chief Signal Officer, with the rank of colonel of cavalry, and of six officers of the line, detailed for signal duty, and one hundred enlisted men, detailed from the battalion of engineers; these details were to be conditioned upon the successful passage of a preliminary examination, and the officers, while so detailed, were to receive mounted pay. By the act of March 3, 1871 (16 id., 520), certain duties in connection with the observation and report of storms were assigned to the department. By the act of June 18, 1878 (20 id., 146), the number of

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enlisted men, hitherto fixed by Executive regulation, was established at four hundred and fifty, and by the act of June 20, 1878 (id., 219), the enlisted force of the department was fixed at one hundred and fifty sergeants, thirty corporals, and two hundred and seventy privates, who were to receive the pay and allowances of enlisted men of corresponding grades in the battalion of engineers. By this enactment extra-duty pay was prohibited, and the commissioned force of the department was increased by the annual appointment of two second lieutenants, who were to be selected from the grade of sergeant. By the act of June 16, 1880 (21 id.,.267), the rank of brigadier general was conferred upon the Chief Signal Officer, and the number of privates was increased to three hundred and twenty; by the act of August 4, 1886 (24 id., 247), the number of second lieutenants was limited to sixteen, the school of instruction at Fort Myer, Va., was abolished, and the Secretary of War was authorized to detail five commissioned officers of the Army for signal duty, this number to be in addition to the second lieutenants already authorized by law; this requirement was repeated in the acts of October 2, 1888 (26 id., 537), and March 2, 1889 (id., 969), by which enactments the number of second lieutenants was reduced to fourteen.

By the act of October 1, 1890 (26 Stat. 653), the Weather Service was transferred to the Department of Agriculture and the strength of the Signal Corps was established at one Chief Signal Officer (brigadier general), one major, four captains, and four first lieutenants mounted, and fifty sergeants who were to have the pay and allowances of hospital stewards. The second lieutenants not selected for appointment as first lieutenants were to be transferred to the line of the Army. By the act of August 6, 1894, the department was reorganized, the reorganization to take effect upon the occurrence of a vacancy in the office of Chief Signal Officer, when the corps was to consist of one colonel, one lieutenant colonel, one major, three captains, and three first lieutenants; by the act of March 2, 1897 (29 id., 611), the promotions provided for in the act of August 6, 1894, were authorized to be made. By section 2 of the act of May 18, 1898 (30 id., 417), and joint resolution No. 53, of July 8, 1898 (id., 749), a volunteer Signal Corps was authorized, to consist of one colonel, one lieutenant colonel, one major, as disbursing officer, and such other officers and men as might be required, not exceeding one lieutenant colonel for each army corps, and two captains, two first lieutenants, five first-class sergeants, ten sergeants, ten corporals, and thirty first-class privates to each organized division of troops, a certain proportion of whom were to be skilled electricians or telegraph operators.

By section 24 of the act of February 2, 1901 (31 Stat. 754), the permanent strength of the Signal Corps was fixed at one Chief Signal Officer with the rank of brigadier general, one colonel, one lieutenant colonel, four majors, fourteen captains, fourteen first lieutenants, eighty first-class sergeants, one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks; and a system of detail was established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Signal Department.

By act of March 2, 1903 (32 Stat. 932), there was added to the commissioned force one lieutenant colonel, two majors, four captains, and four first lieutenants, and the enlisted force has been increased as stated in note to paragraph 880, ante.

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CHAPTER XXIII.

CHAPLAINS.

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CHAPLAINS.

902. *Appointment.*—The President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army, at the rates of one for each regiment of cavalry and infantry in the United States service, and twelve for the corps of artillery, with the rank, pay, and allowances of captains of infantry.[1] *Sec. 12, Act of Feb. 2, 1901 (31 Stat. 750).*

903. *Same.*—In addition to the chaplains now authorized for the Artillery Corps the President is authorized to appoint, by and with the advice and consent of the Senate, and subject to the laws governing appointment of chaplains in the Army, one chaplain for each regiment of field artillery and two for the coast artillery, with the rank, pay, and allowances now authorized by law for chaplains in the Army. *Sec. 12, Act of Jan. 25, 1907 (34 Stat. 864).*

904. *Same.*—In addition to the number of chaplains now authorized by law[2] there shall hereafter be one for the Corps of Engineers. *Act of June 12, 1906 (34 Stat. 256).*

QUALIFICATIONS.

905. *Qualifications.*—No person shall be appointed as regimental or post chaplain until he shall have furnished proof that he is a regularly ordained minister of some religious denomination, in good standing at the time of his appointment, together with a recommendation for

[1] Section 1121, R. S., reads as follows: "The President may, by and with the advice and consent of the Senate, appoint a chaplain for each regiment of colored troops and 30 post chaplains."

[2] The act of February 2, 1901 (31 Stat. 758), which authorized the organization of one provisional regiment of infantry for service in Porto Rico, provided that the regiment should be organized as to numbers as authorized for infantry regiments of the Regular Army. Consequently this regiment has one chaplain.

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such appointment from some authorized ecclesiastical body, or from not less than five accredited ministers of said denomination. *Sec. 1123, R. S.*

906. *Same.*—No person in civil life shall hereafter be appointed a * * * chaplain until he shall have passed satisfactorily such examination as to his mental, moral, and physical qualifications as may be prescribed by the President: * * * *Provided further*, That in case of the appointment of an officer who has served in a similar capacity during the War with Spain and has demonstrated his moral, mental, and physical qualifications for the position, then such examination shall not be required. *Sec. 7, Act of Mar. 2, 1899 (30 Stat. 979).*

907. *Same.*—No person shall be appointed a chaplain in the Regular Army who shall have passed the age of forty years, nor until he shall have established his fitness as required by existing law. *Sec. 12, Act of Feb. 2, 1901 (31 Stat. 750).*

908. *Rank and status.*—Chaplains shall have the rank of captains of infantry, without command, and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions. *Sec. 1122, R. S.*

909. *Promotion.*—Hereafter the President may, from time to time, select from among the chaplains of the Army any chaplains having not less than ten years' service, in the grade of captain, who shall have been commended as worthy of special distinction for exceptional efficiency by the regimental or district commanders with whose commands they may be serving as chaplains, approved through regular military channels, and may, with the advice and consent of the Senate, promote such regimental or artillery chaplains to be chaplains with the grade, pay, and allowances of major; every such promotion being made with a view to active service until the statutory age for the compulsory relinquishment thereof, except in cases of physical disability incurred in the line of duty: *Provided*, That the total number in active service so promoted shall not at any time exceed fifteen, and that the remaining chaplains shall have the grade, pay and allowances of captain, mounted, after they shall have completed seven years of service: *And provided further*, That all persons who may hereafter be appointed as chaplains shall have the grade, pay, and allowances of first lieutenant, mounted, until they shall have completed seven years of service. *Sec. 1, Act of Apr. 21, 1904 (33 Stat. 226).*

910. *Designation.*—All officers provided for in this Act shall have a uniform designation in official address as chaplains of their respective regiments or of the Artillery Corps. *Sec. 2, id.*

911. *Effect of act.*—Nothing in this Act shall be construed as depriving any chaplain of his commission in the Army, or as inter-

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fering with existing law pertaining to regimental and corps assignments or transfers, and that nothing herein contained shall be held or construed to increase the number of chaplains, as now authorized by law, or to reduce the grade of any now serving. *Sec. 3, id.*

912. *Assignments.*—The office of post chaplain is hereby abolished, and the officers holding commissions as chaplains, or who may hereafter become chaplains, shall be assigned to regiments or to the corps of artillery. *Sec. 12, Act of Feb. 2, 1901 (31 Stat. 750).*

913. *Transfers and transportation.*—Chaplains may be assigned to such stations as the Secretary of War shall direct, and they may be transferred, as chaplains, from one branch of the service or from one regiment to another, by the Secretary of War, without further commission. When serving in the field, chaplains shall be furnished with necessary means of transportation by the Quartermaster's Department. *Id.*

DUTIES.

914. *Duties.*—All regimental chaplains and post chaplains shall, when it may be practicable, hold appropriate religious services, for the benefit of the commands to which they may be assigned to duty, at least once on each Sunday, and shall perform appropriate religious burial services at the burial of officers and soldiers who may die in such commands. *Sec. 1125, R. S.*

915. *Same—Instruction.*—The duty of chaplains of regiments of colored troops and of post chaplains shall include the instruction of the enlisted men in the common English branches of education.[1] *Sec. 1124, R. S.*

916. *Same—Reports.*—Post and regimental chaplains shall make monthly reports to the Adjutant-General of the Army, through the usual military channels, of the moral condition and general history of the regiments or posts to which they may be attached. *Sec. 1126, R. S.*

917. *Facilities for duties.*—It shall be the duty of commanders of regiments, hospitals, and posts to afford to chaplains, assigned to the same for duty, such facilities as may aid them in the performance of their duties. *Sec. 1127, R. S.*

HISTORICAL NOTE.

The office of chaplain existed in the Revolutionary armies, as is indicated by the requirement of section 1, article 4, of the Rules and Articles of War of 1776, which provides a penalty for the nonperformance of the duties appropriate to the office. The act of March 3, 1791 (1 Stat. 222), authorized the appointment of a chaplain in case the President might "deem such appointment

[1] For statutory provisions respecting post schools, see the article relating to military posts in the chapter entitled Public Property. The detail of officers at post schools, and the regulations governing the courses of instruction therein, are announced in orders from the War Department. For the duties and assignments of chaplains, see paragraphs 43–46, Army Regulations of 1913.

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necessary to the public interest." As the act contemplated a brigade organization, it would appear that the office thus conditionally created was that of a brigade rather than a regimental chaplain. The inclusion of the chaplain in the "general staff," in section 7 of the act of March 5, 1792 (id., 242), and March 3, 1795 (id., 430), would also seem to indicate the correctness of this view. No provision was made for the services of chaplains in the enactments respecting the Militia of May 2, 1792 (id., 264), and May, 8, 1792 (id., 267), nor in the militia act of January 21, 1903 (32 Stat. 775.) The office of chaplain was discontinued on October 1, 1796, in conformity to the requirements of the act of May 30, 1796 (id., 483), "to ascertain and fix the military establishment of the United States." The acts authorizing the creation of a provisional army, approved May 28, 1798 (id., 561), made no provision for the services or compensation of chaplains, but this omission was supplied by a provision for four chaplains in the act of July 16, 1798 (id., 604), who were to be attached to the general staff, and were to receive the pay and allowances of majors. No provision was made for these officers, however, in the act of March 3, 1799 (id., 749). By the acts of February 2, 1800 (2 id., 7), and May 14, 1800 (id., 85), the operation of the foregoing enactments was suspended, and the act of March 16, 1802 (id., 133), contained no provision for chaplains, or for the procurement of religious services at military posts.

The act of April 12, 1808 (2 Stat. 481, sec. 7), passed in contemplation of war with England, authorized the appointment of brigade chaplains, and similar provision was made in section 24 of the act of February 6, 1812 (id., 671), which conferred upon these officers the pay and allowances of majors of infantry, and this last-named provision was repeated in section 16 of the act of January 20, 1813 (id., 791). The acts of March 3, 1815 (3 Stat. 224); April 24, 1816 (id., 297); April 14, 1818 (id., 420); April 20, 1818 (id., 460); March 2, 1821 (id., 615), to reduce and fix the military peace establishment, made no provision for these officers which then ceased to exist.

The office of post chaplain was established by section 18 of an act of July 5, 1838 (5 Stat. 259), appointments thereto being vested in the councils of administration of the several military posts. The chaplains were to act as post schoolmasters, and their compensation was to be fixed by the post councils, with the approval of the Secretary of War, but was in no case to exceed forty dollars per month, with four rations per day and an established allowance of fuel and quarters. The number of chaplain posts was fixed at twenty by the act of July 7, 1838 (id., 308), which were to be designated by the Secretary of War, and were to be "confined to places most destitute of instruction." By section 3 of the act of March 2, 1849 (9 id., 351), ten additional chaplains were authorized, and by section 2 of the act of February 21, 1857 (11 Stat. 163), the monthly pay proper of chaplains was increased to a sum not exceeding sixty dollars, subject to the approval of the post council of administration.

For each of the regiments of volunteers authorized to be raised for the War with Mexico a chaplain was authorized, and power was conferred upon the President to order the existing post chaplains to the theater of active operations, and, in the event of their refusal to obey such order, their offices were to be declared vacant by the Adjutant-General of the Army; section 7 act of February 11, 1847 (9 Stat. 124). During the Civil War a chaplain was authorized for each regiment of volunteers, who was to have the pay and allowances of a captain of cavalry; section 9, act of July 22, 1861 (12 Stat. 270). By section 7 of the act of August 3, 1861 (id., 288), none but ministers of some Christian denomination were to be eligible for appointment. By section 2 of the act of May 30, 1862 (id., 404), the President was authorized to appoint a chaplain for each general hospital; by the act of July 17, 1862 (id., 594), their pay and allowances were fixed and the qualifications for the office were established. Rank without command was conferred by the act of April 9, 1864 (13 id., 46), in which enactment their duties were still further defined. By section 31 of the act of July 28, 1866 (14 id., 337), the existing force was recognized and continued, and one chaplain was authorized for each regiment of colored troops established, "whose duty shall include the instruction of the enlisted men in the common English branches of education;" by section 7 of the act of March 2, 1867 (id., 423), the rank of captain of infantry, without command, was conferred, and chaplains were placed upon the same footing in respect to pay, allowances, and emoluments as other officers of the Army. By section 12 of the act of February 2, 1901 (31 Stat. 750), the distinction between post and regimental chaplains was abolished and chaplains were thereafter required to be assigned to regiments of the line or to stations occupied by the troops of the corps of artillery.

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CHAPTER XXIV.

COMMISSIONED OFFICERS.

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APPOINTMENTS.

918. *Grade of second lieutenant.*—Hereafter vacancies in the grade of second lieutenant occurring in any fiscal year shall be filled by appointment in the following order, namely: First, of cadets graduated from the United States Military Academy during that fiscal year;[1] second, of enlisted men whose fitness for promotion shall have been determined by competitive examination;[2] third, of candidates from civil life between the ages of twenty-one and twenty-seven years.[3] The President is authorized to make rules and regulations to carry these provisions into effect. *Act of Mar. 3, 1911 (36 Stat. 1045).*

919. *Same—Promotion of noncommissioned officers.*—Noncommissioned officers may, under regulations established by the Secretary of War, be examined by a board of four officers, as to their qualifications for the duties of commissioned officers in the line of the Army, and shall be eligible for appointment as second lieutenants in any corps of the line for which they may be found so qualified. If there be no vacancy in such corps, any noncommissioned officer so found qualified for a commission therein may be attached to it by the President as a supernumerary officer, by brevet of second lieutenant, subject to the provisions of section twelve hundred and fifteen. *Sec. 1214, R. S.*

920. *Same—Of enlisted men.*—The President is hereby authorized to prescribe a system of examination of enlisted men of the Army, by such boards as may be established by him, to determine their

[1] As to the appointment of cadets see paragraphs 1154 and 1155, post; and as to the limitations and appointment of cadets who never graduated see paragraphs 1162 and 1164, post. As to appointment as second lieutenants of Engineers see paragraphs 784 and 786, ante. As to appointments in the Medical Corps see paragraph 732, ante.

[2] As to regulations governing the appointment of enlisted men see paragraphs 27 to 33, A. R., 1913. See also the next five paragraphs.

[3] As to regulations governing the appointment of candidates from civil life see paragraphs 34–37, A. R., 1913.

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fitness for promotion to the grade of second lieutenant: *Provided*, That all unmarried soldiers under thirty years of age, who are citizens of the United States, are physically sound, who have served honorably not less than two years in the Army, and who have borne a good moral character before and after enlistment, may compete for promotion under any system authorized by this act. *Act of July 30, 1892 (27 Stat. 336).*

921. *Examination board.*—The members and recorder of such boards as may be established by the President, under the provisions of the preceding section, shall be sworn in every case to discharge their duties honestly and faithfully; and the boards may examine witnesses and take depositions, for which purposes they shall have such powers of a court of inquiry as may be necessary. *Sec. 2, id.*

922. *Filling vacancies.*—The vacancies in the grade of second lieutenant heretofore filled by the promotion of meritorious noncommissioned officers of the Army, under the provisions of section three of the act approved June eighteenth, eighteen hundred and seventy-eight, shall be filled by the appointment of competitors favorably recommended under this act, in the order of merit established by the final examination. *Sec. 3, id.*

923. *Certificates of eligibility.*—Each man who passes the final examination shall receive a certificate of eligibility, setting forth the subjects in which he is proficient and the especial grounds upon which the recommendation is based: *Provided*, That not more than two examinations shall be accorded to the same competitor. *Sec. 3, id.*

924. *Same—Vacation of.*—All rights and privileges arising from a certificate of eligibility may be vacated by sentence of a court-martial, but no soldier, while holding the privileges of a certificate, shall be brought before a garrison or regimental court-martial or summary court.[1] *Sec. 4, id.*

925. *Commissions—Execution of.*—Hereafter the commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture shall be made out and recorded in the respective Departments under which they are to serve, and the Department seal affixed thereto, any laws to the contrary notwithstanding: *Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States.[2] *Act of Mar. 28, 1896 (29 Stat. 75).*

[1] Garrison and regimental courts-martial have been abolished and their jurisdiction transferred to the special courts-martial provided for by the act of March 2, 1913 (37 Stat. 722). See pages 614–616.

[2] A commission, whatever its form, is but evidence of the fact that the President has exercised his constitutional power of appointment; there is no provision of law requiring a specified form of commission to be issued to officers in the military service. (O'Shea *v.* U. S., 28 Ct. Cls., 392.)

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926. *Appointments.*—Hereafter all appointments in the line of the Army shall be by commission in an arm of the service and not by commission in any particular regiment.[1] *Sec. 2, Act of Oct. 1, 1890 (26 Stat. 562).*

PROMOTIONS.

927. *Seniority.*—Hereafter promotions to every grade in the Army below the rank of brigadier-general, throughout each arm, corps, or department of the service, shall, subject to the examination hereinafter provided for, be made according to seniority in the next lower grade of that arm, corps, or department.[2] *Sec. 1, id.*

928. *Same.*—Hereafter all vacancies occurring in the cavalry, artillery, and infantry above the grade of second lieutenant shall, subject to the examination now required by law, be filled by promotion according to seniority from the next lower grade in each arm.[3] *Sec. 2, Act of Apr. 26, 1898 (30 Stat. 364).*

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[1] An appointment or commission, in order to take effect at all, must be accepted; but when accepted, it takes effect as of and from its date, i. e., the date on which it is completed by the signature of the appointing power, or that as and from which it purports in terms to be operative. (Dig. Opin. J. A. G., 1912, p. 801, 6a and 7a. See also Marbury *v.* Madison, 1 Cranch, 137; U. S. *v.* Bradley, 10 Pet., 304; U. S. *v.* Le Baron, 19 How., 78; Montgomery *v.* U. S., 5 Ct. Cls., 97. See also chapter entitled "The Executive.")

The power of the President to fill a vacancy in the Army during a recess of the Senate may be exercised by a letter from the Secretary of War, and such a letter may constitute his commission, there being no law which prescribes the form of a military commission. (O'Shea *v.* U. S., 28 Ct. Cls., 392.) Where the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. (Collins *v.* U. S., 14 Ct. Cls. 22; Dig. Opin. J. A. G., 150.) An officer of the Army or Navy of the United States does not hold his office by contract, but at the will of the sovereign power. (Crenshaw *v.* U. S., 134 U. S., 98.) For statutory provisions respecting appointments to the lowest grades in the several staff corps see the chapters so entitled.

So much of section 1218, Revised Statutes, as amended by the act of May 13, 1884 (23 Stat. 21), as requires that "No person who held a commission in the Army or Navy of the United States at the beginning of the late rebellion, and afterwards served in any capacity in the military, naval, or civil service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion, shall be appointed to any position in the Army or Navy of the United States," was repealed by the act of March 31, 1896 (29 Stat. 235.) For statutory provisions regulating the appointment of officers of volunteers to the Army, see section 28 of the act of February 2, 1901 (31 Stat. 755), 1101.

[2] The act of October 1, 1890 (26 Stat. 562), contained the requirement that all officers above the grade of second lieutenant in the line of the Army should, "subject to such examination, be entitled to promotion in accordance with existing laws and regulations." The effect of this provision was to continue the operation of the rule of regimental promotion in respect to all officers of the line above the grade of second lieutenant. The rule of lineal promotion was made general in its application by section 2 of the act of April 26, 1898 (30 Stat. 364). Seniority of rank alone, in the military service, gives no right to promotion. Physical, mental, and moral fitness are required. (Steinmetz *v.* U. S., 33 Ct. Cls., 404.) The act of October, 1890, did not make it obligatory upon the President to promote the senior officer to a vacancy existing in the next higher grade if the record of the officer, in his opinion, had been such as to indicate that he was disqualified for promotion. (30 Opin. Atty. Gen., 177.)

[3] *Appointment and promotion of commissioned officers.*—Notices of appointments and promotions are issued by the War Department, through the Adjutant-General of the Army. (Par. 21, A. R. 1913.)

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HISTORICAL NOTE.

The rule of promotion in the line of the Army, as stated in paragraph 22 of the Regulations of 1889, required that "promotions to the rank of captain will be made regimentally, to major, lieutenant colonel, and colonel, according to arm of service." This rule, which was replaced by the act of October 1, 1890 (par. 1271, supra), had its origin in an order of the Secretary of War, dated May 26, 1801, which declared that "promotions to the rank of captain shall be made regimentally, and to the rank of major and lieutenant colonel in the lines of the artillery and infantry, respectively." This order was supplemented by another, issued on May 7, 1808, making the above rule for promotion in the infantry and artillery applicable to the cavalry and riflemen.

The earliest Congressional action on the subject of promotion in the Army is contained in the fifth section of the act of June 26, 1812 (2 Stat. 764), which provided that thereafter "the promotion shall be made through the lines of artillerists, light artillery, dragoons, riflemen, and infantry, respectively, according to established rule." The rule therein referred to is that which was established by the Executive order as above stated, and the effect of the statute was to give the order a legislative sanction. Subsequently, by section 12 of the act of March 30, 1814 (3 Stat. 113), it was provided "that from and after the passage of this act promotions may be made through the whole Army in its several lines of light artillery, light dragoons, artillery, infantry, and riflemen, respectively." Since the enactment of this last provision, which continued in force down to the revision of the statutes, promotions to the rank of captain have uniformly been made regimentally, so that the construction given thereto, in practice, has been that it made no change or modification of the previously existing rules. According to this construction (which was acted upon for about sixty years) the act of 1814, while it contemplated that promotions should be made in the several lines or arms through the whole Army, and that officers should be promoted only in their respective lines or arms, did not prescribe how promotions within the lines or arms should be made, whether regimentally or lineally. As thus understood—and the language of the act is susceptible of that interpretation—there was no conflict between it and the rule adverted to.

Section 1204, Revised Statutes, contains substantially a reenactment of the provision above quoted from the act of 1814. When embodying that provision in the Revised Statutes, it is reasonable to presume that Congress was familiar with the construction which had been placed thereon, and so long acted upon by the executive department, and that if it had been the intention of that body to introduce a different rule on the subject of promotion, different phraseology would have been chosen to signify such design. By adopting the language of the previous statute the fair inference is that its construction was acquiesced in, and that no change in the law of promotion was intended. (17 Opin. Atty. Gen., 65. See also paragraph 987, post.)

929. *Examination.*—On and after the passage of this Act, every line officer on the active list below the grade of colonel who has lost in lineal rank through the system of regimental promotion in force prior to October first, eighteen hundred and ninety, may, in the discretion of the President, and subject to examination for promotion as prescribed by law, be advanced to higher grades in his arm up to and including the grade of colonel, in accordance with the rank he would have been entitled to hold had promotion been lineal throughout his arm or corps since the date of his entry into the arm or corps to which he permanently belongs: *Provided*, That officers advanced to higher grades under the provisions of this Act shall be additional

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Appointment to the grade of general officer is made by selection from the Army. (Par. 22, Id.)

Promotions in established staff corps and departments to include the grade of colonel will be made by seniority, subject to the examinations required by law. (Par. 24, Id.)

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officers in those grades: *Provided further*, That nothing in this Act shall operate to interfere with or retard the promotion to which any officer would be entitled under existing law: *And provided further*, That the officers advanced to higher grades under this Act shall be junior to the officers who now rank them under existing law, when these officers have reached the same grade. *Act of Mar. 3, 1911 (36 Stat. 1058)*.

930. *Examination.*—That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the Army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: *Provided*, That the President may waive the examination for promotion to any grade in the case of any officer who in pursuance of existing law has passed a satisfactory examination for such grade prior to the passage of this act: *And provided*, That if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination, and be found incapacitated for service by reason of physical disability contracted in line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army.[1] *Sec. 3, Act of Oct. 1, 1890 (26 Stat. 562)*.

931. *Same—Appointees from civil life.*—The examination of officers appointed in the Army from civil life, or of officers who were officers of volunteers only, or were officers of the militia of the several States called into the service of the United States, or were enlisted men in the regular or volunteer service, either in the Army, Navy, or Marine Corps, during the war of the rebellion, shall be conducted by boards composed entirely of officers who were appointed from civil life or of officers who were officers of volunteers only during said war, and such examination shall relate to fitness for practical service and not to technical and scientific knowledge; and in case of failure of any such officer in the reexamination hereinbefore provided for, he shall

[1] For the statutes governing the subject of examinations of medical officers see paragraphs 735–6, ante.

Joint Resolution No. 48, of June 14, 1898 (30 Stat. 747), contains the requirement "that during the existing war the President may, in his discretion, waive the one-year suspension from promotion and forthwith order the reexamination provided in certain cases by the third proviso of section three of the act approved October first, eighteen hundred and ninety, entitled 'An act to provide for the examination of certain officers of the Army and to regulate promotions therein."

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be placed upon the retired list of the Army; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for.[1] *Sec. 3, id.*

932. *Same—Waiver.*—Officers entitled by this section to examination by a board composed entirely of officers who were appointed from civil life, or who were officers of volunteers only during the war, may, by written waiver filed with the War Department, relinquish such right, in which case the examination of such officers shall be conducted by boards composed as shall be directed by the Secretary of War.[2] *Sec. 1, Act of July 27, 1892 (27 Stat. 276).*

933. *Same—Absence of officer.*—When the exigencies of the service of any officer who would be entitled to promotion upon examination require him to remain absent from any place where an examining board could be convened, the President is hereby authorized to promote such officer, subject to examination, and the examination shall take place as soon thereafter as practicable. If upon examination the officer be found disqualified for promotion, he shall, upon the approval of the proceedings by the Secretary of War, be treated in the same manner as if he had been examined prior to promotion. *Sec. 32, Act of Feb. 2, 1901 (31 Stat. 756).*

ASSIGNMENTS TO REGIMENTS, TRANSFERS, AND DETAILS TO THE STAFF.

934. *Transfers to the staff.*—Officers may be transferred from the line to the staff of the Army without prejudice to their rank or promotion in the line; but no officer shall hold, at the same time, an appointment in the line and an appointment in the staff which confer equal rank in the Army. When any officer so transferred has, in virtue of seniority, obtained or become entitled to a grade of his regiment equal to the grade of his commission in the staff, he shall vacate either his commission in the line or his commission in the staff. *Sec. 1205, R. S.*

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[1] Under the act of October 1, 1890, the finding of the board of examination that the officer is incapacitated for duty is not *per se* final, but must be reported for the action of the Secretary of War and passed upon by him. Where the finding and report of the board have been approved but not yet executed by actual retirement, there may intervene contingencies which would supersede such proceeding, as the trial and dismissal of the officer by court-martial, or the arising of new causes which might make proper that the question of his disability be inquired into by a retiring board convened under Sec. 1246, Revised Statutes. But unless some such new occasion and ground of disqualification be presented the action of the Secretary of War in approving the report remains final and exhaustive, and the officer is entitled to be retired under the act of 1890, and can not legally be ordered before such retiring board. (Dig. Opin. J. A. G., 1912, p. 988 b (2).)

The privilege of retirement which an officer has "with the rank to which his seniority entitled him to be promoted," given by the act of October 1, 1890 (26 Stat. 562), is limited to cases where the officer failed in his physical examination only. (Steinmetz *v.* U. S., 33 Ct. Cls., 404.)

[2] This refers to section 3 of the act of October 1, 1890 (26 Stat. 562), which is amended.

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935. *Assignments and transfers.*—Officers of [all] grades in each arm of the service shall be assigned to regiments, and transferred from one regiment to another, as the interests of the service may require, by orders from the War Department.[1] *Sec. 2, Act of Oct. 1, 1890 (26 Stat. 562).*

936. *Details to the staff.*—When any vacancy, except that of the chief of the department, shall occur (in the Adjutant-General's Department, the Inspector-General's Department, the Quartermaster's Department, the Subsistence Department, the Pay Department, the Ordnance Department, and the Signal Corps) which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps after the original vacancies created by this act shall have been filled. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe. All officers so detailed shall serve for a period of four years, at the expiration of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they shall have served two years with the line.[2] *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

937. *Same.*—On and after December fifteenth, nineteen hundred and twelve, in time of peace whenever any officer holding a permanent commission in the line of the Army with rank below that of major shall not have been actually present for duty for at least two of the last preceding six years with a troop, battery, or company, of that branch of the Army in which he shall hold said commission, such officer shall not be detached nor permitted to remain detached from such troop, battery, or company, for duty of any kind; and all pay and allowances shall be forfeited by any superior for any period during which, by his order, or his permission, or by reason of his failure or neglect to issue or cause to be issued the proper order or instructions at the proper time, any officer shall be detached or permitted to remain detached in violation of any of the terms of this proviso; but nothing in this proviso shall be held to apply in the case of any officer for such period as shall be actually necessary for him, after having been relieved from detached service, to join the troop, battery, or company, to which he shall belong in that branch in which he shall hold a permanent commission, nor shall anything

[1] See Article 8, A. R., 1913. Vacancies in the grade of second lieutenant in the Engineer Corps can not be filled by transfers of officers from other branches of the Army. (Bulletin 18, W. D., June 7, 1913.)

[2] For statutory regulations respecting details to the staff see the title Details to the Staff, in the chapter entitled The Staff Departments.

The Quartermaster's, Subsistence, and Pay Departments of the Army were consolidated into the Quartermaster Corps by section 3 of the act of August 24, 1912 (37 Stat. 591). See paragraph 495.

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in this proviso be held to apply to the detachment or detail of officers for duty in the Judge Advocate General's Department or in the Ordnance Department, or in connection with the construction of the Panama Canal until after such canal shall have been formally opened, or in the Philippine Constabulary until the first day of January, nineteen hundred and fourteen, or to any officer detailed, or who may be hereafter detailed, for aviation duty. And hereafter no officer holding a permanent commission in the Army with rank below that of major shall be detailed as assistant to the Chief of the Bureau of Insular Affairs with rank of colonel, or as commanding officer of the Porto Rico Regiment of Infantry, or as chief or assistant chief (Director or Assistant Director) of the Philippine Constabulary, and no other officers of the Army shall hereafter be detailed for duty with the said Constabulary except as specifically provided by law. *Act of Aug. 24, 1912* (*37 Stats. 571, 645*).

938. *Same.*—Hereafter, in determining the eligibility, under the provisions of the Act of Congress approved August twenty-fourth, nineteen hundred and twelve, of troop, battery, or company officers for detail as officers of the various staff corps and departments of the Army, except the General Staff Corps, service actually performed by any such officer with troops prior to December fifteenth, nineteen hundred and twelve, as a regimental, battalion, or squadron staff officer, shall be deemed to have been duty with a battery, company, or troop: *Provided further*, That regimental, battalion, and squadron quartermasters and commissaries shall hereafter be required to perform the duties of officers of the Quartermaster Corps, including the receipting for any money or property pertaining to said corps, when no officer of the Quartermaster Corps is present for such duties, and nothing contained in the Army appropriation Act approved August twenty-fourth, nineteen hundred and twelve, shall hereafter be held or construed so as to prevent competent authority from requiring any officers of the Army to act temporarily as quartermasters wherever there shall be no officers of the Quartermaster Corps and no regimental, battalion, or squadron quartermasters or commissaries present for such duty. *Act of Mar. 2, 1913* (*37 Stat. 706.*)

938½. *Same—Limitation extended to field officers.*—That after September first, nineteen hundred and fourteen, in time of peace, whenever any officer holding a permanent commission in the line of the Army, with rank of colonel, lieutenant colonel, or major, shall not have been actually present for duty for at least two years of the last preceding six years with a command composed of not less than two troops, batteries, or companies of that branch of the Army in which he shall hold said commission, such officer shall not be detached nor permitted to remain detached from such command for duty of any kind except as hereinafter specifically provided; and all pay and

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allowances shall be forfeited by any superior for any period during which, by his order or his permission, or by reason of his failure or neglect to issue or cause to be issued the proper order or instructions at the proper time, any officer shall be detached or permitted to remain detached in violation of any of the terms of this Act; but nothing in this Act shall be held to apply in the case of any officer for such period as shall be actually necessary for him, after having been relieved from detached service, to join the organization or command to which he shall belong in that branch in which he shall hold a permanent commission; nor shall anything in this Act be held to apply to the detachment or detail of officers for duty in connection with the construction of the Panama Canal until after such canal shall have been formally opened, or in connection with the Alaska Road Commission or the Alaska Railroad or the Bureau of Insular Affairs; and nothing in this Act shall prevent the redetail of officers above the grade of major to fill vacancies in the various staff corps and departments as provided for by section twenty-six of the Act of Congress approved February second, nineteen hundred and one: *Provided further*, That whenever the service record of any field officer is to be ascertained for the purposes of this Act, all duty actually performed by him during the last preceding six years, in a grade below that of major, in connection with any statutory organization of that branch of the Army in which he shall hold a permanent commission, or as a staff officer of any coast-defense or coast-artillery district, shall be credited to him as actual presence for duty with a command composed as hereinbefore prescribed: *And provided further*, That temporary duty of any kind hereafter performed with United States troops in the field for a period or periods the aggregate of which shall not exceed sixty days in any one calendar year, and duty hereafter performed in command of United States army mine planter by an officer assigned to a company from which this detachment is drawn, and duty hereafter performed in command of a machine-gun platoon or a machine-gun unit, by any officer who, before assignment to such duty, shall have been regularly assigned to, and shall have entered upon duty with, an organization or a command the detachment of certain officers from which is prohibited by the Act of Congress approved August twenty-fourth, nineteen hundred and twelve, or by this Act, shall, for the purposes of said Acts, hereafter be counted as actual presence for duty with such organization or command. *Act of Apr. 27, 1914 (38 Stat. 357).*

DETAILS.

939. *Details to foreign Governments.*—The consent of Congress is hereby granted to the acceptance by officers of the army, in the discretion of the President, of such military details under the Govern-

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ments of Cuba and Panama as may be requested by the Presidents of these Republics: *Provided*, That such details shall not exceed five in number: *And provided further*, That no officer so detailed shall receive any present, emolument, office, or title of any kind whatever from the Government of Cuba or Panama.[1] *Act of Apr. 19, 1910 (36 Stat. 324)*.

940. *Detailed as Indian agents.*—That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian agents at all agencies where vacancies from any cause may hereafter occur, who, while acting as such agents, shall be under the orders and direction of the Secretary of the Interior, except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian.[2] *Act of July 13, 1892 (27 Stat. 120)*.

941. *Miscellaneous provisions respecting commissioned officers.*—Officers of the Army of the United States may be detailed for service as chief and assistant chiefs, the said assistant chiefs not to exceed in number four, of the Philippine constabulary, and that during the continuance of such details the officer serving as chief shall have the rank, pay, and allowances of brigadier-general, and the officers serving as assistant chiefs shall have the rank, pay, and allowances of colonel: *Provided*, That the difference between the pay and allowances of brigadier-general and colonel, as herein provided, and the pay and allowances of the officers so detailed in the grades from which they are detailed shall be paid out of the Philippine treasury. *Sec. 1, Act of Jan. 30, 1903 (32 Stat. 783)*.

942. *Active officers.*—The President may, upon the application of any established college or university within the United States, having capacity to educate, at the same time, not less than one hundred and fifty male students, detail an officer of the Army to act as president, superintendent, or professor thereof; but the number of officers so detailed shall not exceed (*twenty*) (thirty) at any time, and they

[1] Special details are sometimes made under authority of Congress. As an instance of such authorization the following joint resolution is quoted:

"That Captain John W. Gulick, Coast Artillery Corps, United States Army, be, and he is hereby, permitted to accept from the Government of the Republic of Chile the position of instructor of the Coast Artillery of the Chilean Army and the emoluments, rights, and privileges pertaining thereto." (Joint resolution, May 11, 1912, 37 Stat., 1346.)

The authority for the detail of military attachés is derived from appropriation acts, which allow certain funds for such purposes.

[2] See, for other provisions of law respecting the detail of officers as Indian agents, the chapter entitled The Indians—Indian Agents—The Indian Country. For other enactments authorizing the employment of officers on the active list on civil or nonmilitary duty, see sections 4653, 4664, and 4671, Revised Statutes, authorizing the detail of officers on light-house duty; the act of July 31, 1882 (22 Stat. 181), authorizing the detail of an officer for duty in connection with Indian education; section 5 of the act of August 1, 1890 (26 id., 337), authorizing the detail of an officer as a member of the Chickamauga Park Commission.

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shall be apportioned throughout the United States, as nearly as may be practicable, according to population. Officers so detailed shall be governed by general rules prescribed, from time to time, by the President. The Secretary of War is authorized to issue at his discretion and under proper regulations to be prescribed by him, out of any small arms or pieces of field artillery belonging to the Government and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice, by the students of any college or university under the provisions of this section; and the Secretary shall require a bond in each case, in double the value of the property, for the care and safekeeping thereof, and for the return of the same when required.[1] *Sec. 1225, R. S.*

943. *From the active list.*—The President may, upon the application of any established military institute, seminary or academy, college or university within the United States, having capacity to educate at the same time not less than one hundred and fifty male students, detail an officer of the Army or Navy to act as superintendent or professor thereof; but the number of officers so detailed shall not exceed [fifty][1] from the Army and ten from the Navy, being a maximum of sixty at any time, and they shall be apportioned throughout the United States, first, to those State institutions applying for such detail that are required to provide instruction in military tactics under the provisions of the act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of colleges where the leading object shall be the practical instruction of the industrial classes in agriculture and the mechanic arts, including military tactics; and after that, said details to be distributed, as nearly as may be practicable, according to population.[2] *Act of Sept. 26, 1888 (25 Stat. 491).*

944. *Same—Number of officers increased.*—Section twelve hundred and twenty-five of the Revised Statutes, concerning details of officers of the Army and Navy to educational institutions, is hereby

[1] The first act authorizing the detail of officers at colleges was that of July 28, 1866 (14 Stat. 336), which authorized 20 for detail to established colleges or universities capable of educating at one time not less than 150 male students. The number detailed was to be apportioned throughout the United States according to population, and the detail was as president, superintendent, or professor. The act of May 4, 1870 (16 Stat. 373), authorized the Secretary of War to issue to colleges where Army officers were detailed such small arms or pieces of field artillery as could be spared. The number of officers detailed was increased from 20 to 30 by the act of July 5, 1876 (19 Stat. 74); to 40 by the act of July 5, 1884 (23 Stat. 108). These acts were consolidated and placed in the Revised Statutes, section 1225, given above. The number was changed from 50 for the Army and 10 for the Navy, by act of September 26, 1888 (25 Stat. 491), to 75 for the Army and a total of 85 for the Army and Navy, by act of January 13, 1891 (26 Stat. 716), and to 100 for the Army, and a total of 110 for the Army and Navy, by act of November 3, 1893 (28 Stat. 7).

As to the detail of retired officers to duty with colleges, see the following paragraphs 942–50. See also paymasters' manual, pages 133, 134.

[2] See paragraph 947, post, for amendment.

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amended so as to permit the President to detail under the provisions of said act not to exceed one hundred officers of the Army of the United States; and no officer shall be thus detailed who has not had five years' service in the Army, and no detail to such duty shall extend for more than four years, and officers on the retired list of the Army may upon their own application be detailed to such duty and when so detailed shall receive the full pay of their rank, and the maximum number of officers of the Army and Navy to be detailed at any one time under the provisions of the act approved January thirteenth, eighteen hundred and ninety-one, amending section twelve hundred and twenty-five of the Revised Statutes as amended by an act approved September twenty-sixth, eighteen hundred and eighty-eight, is hereby increased to one hundred and ten. *Act of Nov. 3, 1893 (28 Stat. 7).*

945. *Details from the retired list.*—Section twelve hundred and twenty-five of the Revised Statutes, concerning the detail of officers of the Army and Navy to educational institutions, be, and the same is hereby, amended so as to permit the President to detail under the provisions of that act, and in addition to the detail of the officers of the Army and Navy now authorized to be detailed under the existing provisions of said act, such retired officers of the Army and Navy of the United States as in his judgment may be required for that purpose, to act as instructors in military drill and tactics in schools in the United States, where such instruction shall have been authorized by the educational authorities thereof, and where the services of such instructors shall have been applied for by said authorities.

No detail shall be made under this act to any school unless it shall pay the cost of commutation of quarters of the retired officers detailed thereto and the extra-duty pay to which the latter may be entitled by law to receive for the performance of special duty: *Provided*, That no detail shall be made under the provisions of this act unless the officers to be detailed are willing to accept such position without compensation from the Government other than their retired pay.[1] *Act of Feb. 26, 1901 (31 Stat. 810).*

946. *Details from the retired list.*—Section twelve hundred and twenty-five of the Revised Statutes, concerning the detail of officers of the Army and Navy to educational institutions, is hereby, amended so as to permit the President to detail under the provisions of that Act, and in addition to the details of the officers of the Army and Navy now authorized to be detailed under the existing provisions of said Act, such retired officers and noncommissioned officers of the Army and Navy of the United States as in his judgment may be required for that purpose to act as instructors in military drill

[1] See paragraph 946, post, for amendment.

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and tactics in schools in the United States and Territories where such instructions shall have been authorized by the educational authorities thereof, and where the services of such instructors shall have been applied for by said authorities. No detail shall be made under this Act to any school unless it shall pay the cost of commutation of quarters of the retired officers or noncommissioned officers detailed thereto and the extra-duty pay to which they may be entitled by law to receive for the performance of special duty: *Provided*, That no detail shall be made under the provisions of this Act unless the officers and noncommissioned officers to be detailed are willing to accept such position: *Provided further*, That they shall receive no compensation from the Government other than their retired pay. *Act of Apr. 21, 1904 (33 Stat. 225)*.

947. *Details to colleges.*—That the Act approved November third, eighteen hundred and ninety-three, authorizing the detail of officers of the Army and Navy to educational institutions, be amended so as to provide that retired officers, when so detailed, shall receive the full pay and allowances of their rank, except that the limitations on the pay of officers of the Army above the grade of major as provided in the Acts of March second, nineteen hundred and five, and June twelfth, nineteen hundred and six, shall remain in force.[1] *Act of Mar. 3, 1909 (35 Stat. 738)*.

948. *Detail as professor in a college.*—Any retired officer may, on his own application, be detailed to serve as professor in any college. But while so serving, such officer shall be allowed no additional compensation.[2] *Sec. 1260, R. S.*

949. *Detail of retired officers.*—Upon the application of any college, university, or institution of learning incorporated under the laws of any State within the United States, having capacity at the same time to educate not less than one hundred and fifty male students, the President may detail an officer of the Army on the retired list to act as president, superintendent, or professor thereof; and such officer may receive from the institution to which he may be detailed the difference between his retired and full pay, and shall not receive any additional pay or allowance from the United States.[3] *Act of May 4, 1880 (21 Stat. 113)*.

950. *Detail of retired officers to colleges not limited.*—Nothing in the act entitled "An act to increase the number of officers of the Army to be detailed to colleges, approved November third, eighteen

[1] This paragraph amends paragraph 944 and reaffirms paragraphs 974 and 975.

[2] See Monthly Army List and Directory as to officers detailed under permission of sections 1225 and 1260, R. S., as amended. See also Manual for the Pay Department, pages 134–135.

[3] Officers of the Army on the retired list who, upon their own application, are detailed to educational institutions in accordance with the provisions of the act of November 3, 1893 (28 Stat. 7), are entitled to the full pay of their rank. (4 Comp. Dec., 120.)

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hundred and ninety-three, shall be so construed as to prevent, limit, or restrict the detail of retired officers of the Army at institutions of learning under the provisions of section twelve hundred and sixty, Revised Statutes, and the act making appropriations for the support of the Army, and so forth, approved May fourth, eighteen hundred and eighty, nor to forbid the issue of ordnance and ordnance stores, as provided in the act approved September twenty-sixth, eighteen hundred and eighty-eight, amending section twelve hundred and twenty-five, Revised Statutes, to the institutions at which retired officers may be so detailed; and said act of November third, eighteen hundred and ninety-three, and said act of May fourth, eighteen hundred and eighty, shall not be construed to allow the full pay of their rank to retired officers detailed under said section twelve hundred and sixty, Revised Statutes, and said act of May fourth, eighteen hundred and eighty.[1] *Act of Aug. 6, 1894 (28 Stat. 235).*

ISSUES OF ORDNANCE.

951. *Ordnance stores for colleges.*—The Secretary of War is authorized to issue, at his discretion and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice by the students of any college or university under the provisions of this section, and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe keeping thereof, and for the return of the same when required: *Provided*, That nothing in this act shall be so construed as to prevent the detail of officers of the Engineer Corps of the Navy as professors in scientific schools or colleges as now provided by act of Congress approved February twenty-sixth, eighteen hundred and seventy-nine, entitled "An act to promote a knowledge of steam engineering and iron shipbuilding among the students of scientific schools or colleges in the United States;" and the Secretary of War is hereby authorized to issue ordnance and ordnance stores belonging to the Government on the terms and conditions hereinbefore provided to any college or university at which a retired officer of the Army may be assigned as provided by section twelve hundred and sixty of the Revised Statutes.[1] *Act of Sept. 26, 1888 (25 Stat. 491).*

952. *Same.*—The Secretary of War is authorized to issue at his discretion, and under proper regulations to be prescribed by him,

[1] This statute replaces section 1225, Revised Statutes, as amended by the act of July 5, 1884, "saving always, however, all acts and things done under the said amended section as heretofore existing." The subject of issues of ordnance and ordnance stores to colleges are given at this place because Congress has incorporated its legislation in regard thereto with acts governing the detail of officers at such institutions.

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out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, upon the approval of the governors of the respective States, such number of the same as may be required for military instruction and practice by such school, and the Secretary shall require a bond in each case, for double the value of the property, for the care and safe keeping thereof, and for the return of the same when required.[1] *Act of Feb. 26, 1901, (31 Stat. 810).*

953. *Issues of ordnance and ordnance stores.*—The Secretary of War is authorized to issue at his discretion, and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, upon the approval of the governors of the respective States and Territories, such number of the same as may be required for military instruction and practice by such school, and the Secretary shall require a bond in each case, for double the value of the property, for the care and safe-keeping thereof and for the return of the same when required.[2] *Sec. 3, Act of Apr. 21, 1904 (33 Stat. 226).*

954. *Same.*—The Secretary of War is hereby authorized to issue, at his discretion and under proper regulations to be prescribed by him, without cost of transportation to the United States, such obsolete ordnance and ordnance stores as may be available to State and Territorial educational institutions and to State soldiers and sailors orphans' homes, for purposes of drill and instruction.

And the Secretary of War shall require from such institutions or homes a bond in each case in double the value of the property issued, for the care and safe-keeping thereof and for the return of the same to the United States when required: *Provided*, That the issues herein provided for shall be made only to institutions upon recommendation of the governors of States and Territories and shall not be made in any case to any educational institution to which issues of such stores are allowed to be made under provisions of existing law.[3] *Act of June 30, 1906 (34 Stat. 817).*

955. *Same.*—Ammunition, targets, and other accessories for small-arms and machine-gun target practice and instruction; marksmen's medals, prize arms, and insignia for all arms of the service; and ammunition, targets, target material, and other accessories may be issued for small-arms target practice and instruction at the educational institutions and state soliders' and sailors' orphans' homes, to which issues of small arms are lawfully made, under such regula-

[1] Section 4 of the above enactment contained a clause giving immediate effect to the statute. For other statutes regulating the detail of retired officers at colleges see the paragraphs 945–950, ante.

[2] This paragraph takes the place of paragraph 952.

[3] See paragraphs 849, 850, and 953.

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tions as the Secretary of War may prescribe, provided the total value of the stores so issued to the educational institutions does not exceed thirty thousand dollars.[1] *Act of Mar. 3, 1911 (36 Stat. 1057).*

956. *Assignment to duty at Soldiers' Home.*—Retired officers of the Army may be assigned to duty at the Soldiers' Home, upon a selection by the commissioners of that institution, approved by the Secretary of War; and a retired officer shall not be assignable to any other duty: *Provided*, That they receive from the Government only the pay and emoluments allowed by law to retired officers.[2] *Sec. 1259, R. S.*

957. *Miscellaneous provisions.*—In addition to the detail of retired officers now authorized by law, it shall hereafter be lawful for the Secretary of War to detail, whenever in his judgment the public interests require it, not exceeding twenty retired officers for service in connection with the organized militia in the States or Territories, upon the request of the governor thereof, and such retired officers shall be entitled, while so employed, to receive the full pay and allowances of their respective grades. *Act of Mar. 2, 1903 (32 Stat. 932).*

958. *Details for various duties.*—The Secretary of War may assign retired officers of the Army, with their consent, to active duty in recruiting, for service in connection with the organized militia in the several States and Territories upon the request of the governor thereof, as military attachés, upon courts-martial, courts of inquiry and boards, and to staff duties not involving service with troops; and such officers while so assigned shall receive the full pay and allowances of their respective grades. *Act of Apr. 23, 1904 (33 Stat. 264).*

959. *Adjutant-General of District militia.*—The President of the United States may detail as Adjutant-General of the District of

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[1] See paragraphs 953 and 954.

[2] A retired Army officer is not prohibited by law from holding office in an executive department, nor from receiving the salary thereof in addition to his retired pay. (Collins *v.* U. S., 15 Ct. Cls., 22; Meigs *v.* U. S., 19 Ct. Cls., 497.) A retired officer may be employed by the War Department. (Yates *v.* U. S., 25 Ct. Cls., 296.) See in this connection the act of July 31, 1894 (28 Stat. 205), which permits retired officers to hold office to which they have been elected by the people or appointed by the President with the advice and consent of the Senate. See also section 7 of the act of June 3, 1896 (29 Stat. 235), which contains the requirement "that section 2 of the act of July 31, 1894 (28 Stat. 205), shall not be so constructed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment." This provision operates to exempt from the terms of the act of July 31, 1894 (sec. 1763, R. S.), all retired officers of the Army or Navy who may be employed by the Engineer Department upon works of river and harbor improvement.

A retired officer of the Army "holds a lucrative office," and so is ineligible, under the constitution of Texas, to hold civil office in that State. State *v.* De Gress, 53 Texas, 387. See, also, Hill *v.* Territory, 2 Wash., 147.)

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Columbia Militia any retired officer of the Army who may be nominated to the President by the Brigadier-General commanding the District of Columbia Militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. *Act of June 6, 1900 (31 Stat. 671).*

960. *Ineligible for civil office in any Territory.*—No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment [1] in any Territory,[2] except officers of the Army on the retired list.[3] *Sec. 1860, R. S.*

961. *Employment of retired officers in time of war.*—In time of war retired officers of the Army may, in the discretion of the President, be employed on active duty, other than in the command of troops, and when so employed they shall receive the full pay and allowances of their grades. *Sec. 7, Act of Mar. 2, 1899 (30 Stat. 979).*

RETIREMENT OF OFFICERS.[4]

962. *Retirement upon officer's own application after 40 years' service.*—When an officer has served forty consecutive years as a commissioned officer, he shall, if he makes application therefor to the President, be retired from active service and placed upon the retired list. When an officer has been thirty years in the service, he may, upon his own application, in the discretion of the President, be so retired, and placed on the retired list. *Sec. 1243, R. S.*

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[1] A retired officer of the Army is not ineligible to hold an appointment to a civil office. (XIX Opin. Att. Gen., 283; XV id., 306; Meigs *v.* U. S., 19 Ct. Cls., 497; Converse *v.* U. S., 21 How., 464; U. S. *v.* Brindle, 110 U. S., 688; U. S. *v.* Saunders, 120 U. S., 126.)

[2] The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: *Provided*, That sections eighteen hundred and forty-one to eighteen hundred and ninety-one, inclusive, nineteen hundred and ten and nineteen hundred and twelve, of the Revised Statutes, and the amendments thereto, and an act entitled "An act to prohibit the passage of local or special laws in the Territories of the United States, to limit territorial indebtedness, and for other purposes," approved July thirtieth, eighteen hundred and eighty-six, and the amendments thereto, shall not apply to Hawaii. (Sec. 1, act of May 27, 1910, 36 Stat. 443.)

[3] This provision amends section 5 of the act entitled "An act to provide a government for the Territory of Hawaii," approved April thirteen, nineteen hundred.

[4] It is the practice of the War Department to carry on the unlimited list the following officers:

First. Those retired on reaching 64 years of age.

Second. Those retired on their own application after 40 years' service.

Third. Those previously on the limited list who have reached the age of 64.

Fourth. Those retired on approved findings of examination board for promotion.

Officers placed on the retired list by special acts of Congress are carried on neither the limited nor unlimited lists. There is usually a provision in such acts extending the limited list for each individual case. Such officers are carried under the head of retired [under special acts of Congress]. (See pp. 580 and 581, Army Register for 1914.) By so doing the authorized number on the limited lists stands at 350 without reference to the number retired by special acts.

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963. *Retirement at discretion of President after 45 years' service, or at the age of 62.*—When any officer has served forty-five years as a commissioned officer, or is sixty-two years old, he may be retired from active service at the discretion of the President *Sec. 1244, R. S.*

964. *The same; compulsory retirement at age 64.*—On and after the passage of this act when an officer has served forty years either as an officer or soldier in the regular or volunteer service, or both, he shall, if he make application therefor to the President, be retired from active service and placed on the retired list, and, when an officer is sixty-four years of age, he shall be retired from active service and placed on the retired list: *Provided, further*, That the General of the Army, when retired, shall be retired without reduction in his current pay and allowances; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for. *Act of June 30, 1882 (22 Stat. 118).*

965. *Unlimited retired list.*—Nothing contained in the act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, approved June thirtieth, eighteen hundred and eighty-two, shall be so construed as to prevent, limit, or restrict retirements from active service in the Army, as authorized by law in force at the date of the approval of said act, retirements under the provisions of said act of June thirtieth, eighteen hundred and eighty-two, being in addition to those theretofore authorized by law. *Act of Mar. 3, 1883 (22 Stat. 457).*

966. *Retired list.*—The whole number of officers of the Army on the retired list shall not at any time exceed three hundred and fifty, and any less number to be allowed thereon may be fixed by the President in his discretion.[1] *Sec. 1258, R. S., as amended by Act of Feb. 16, 1891 (26 Stat. 763).*

967. *Transfer from limited to unlimited list.*—When officers who have been placed on the limited retired list as established by section seven, chapter two hundred and sixty-three, page one hundred and fifty, volume twenty, United States Statutes at Large, shall have attained the age of sixty-four years they shall be transferred from said limited retired list to the unlimited list of officers retired by operation of law because of having attained said age of sixty-four

[1] The limited retired list was established by section 16, of the act of August 3, 1861 (12 Stat. 289), which provided that the number of officers retired in accordance with the authority conferred by the act should not, at any time, exceed 7 per cent of the whole number of officers of the Army as fixed by law. By section 5, of the act of July 15, 1870 (16 Stat. 317, sec. 1258, R. S.), the number of officers to be borne upon the retired list was to be determined by the President, in his discretion, but was not to exceed 300. By section 7, of the act of July 17, 1878 (20 Stat. 150), the number of retired officers was increased to 400. By the act of February 16, 1891 (26 Stat. 763), the number was reduced and fixed at 350, the number now authorized by law. For statutes in relation to the retirement of officers found physically disqualified for promotion by boards of examination see paragraphs 930 and 931, ante.

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years. And the limited retired list shall hereafter consist of three hundred and fifty instead of four hundred, as now fixed by law: *Provided*, That officers who have been placed on the retired list by special authority of Congress shall not form part of the limited retired list established by this act. *Act of Feb. 16, 1891 (26 Stat. 763)*.

968. *Retirement for disability.*—When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided.[1] *Sec. 1245, R. S.*

969. *Special advancement in grade.*—Any officer of the Army below the grade of brigadier-general who served with credit as an officer or as an enlisted man in the regular or volunteer forces during the civil war prior to April ninth, eighteen hundred and sixty-five, otherwise than as a cadet, and whose name is borne on the official register of the Army, and who has heretofore been, or may hereafter be, retired on account of wounds or disability incident to the service, or on account of age or after forty years' service, may, in the discretion of the President, by and with the advice and consent of the Senate, be placed on the retired list of the Army with the rank and retired pay of one grade above that actually held by him at the time of retirement: *Provided*, That this Act shall not apply to any officer who received an advance of grade since the date of his retirement or who has been restored to the Army and placed on the retired list by virtue of the provisions of a special Act of Congress. *Act of Apr. 23, 1904 (33 Stat. 264)*.

970. *Same.*—Officers who served creditably in the regular or volunteer forces during the civil war prior to April ninth, eighteen hundred and sixty-five, and who now hold the rank of brigadier-general on the active list of the Army, having previously held that rank for three years or more, shall, when retired from active service, have the rank and retired pay of major-general. *Act of Mar. 2, 1907 (34 Stat. 1163)*.

971. *Same.*—Commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank. *Act of Mar. 4, 1911 (36 Stat. 1354)*.

972. *General officers.*—Hereafter no officer holding a rank above that of colonel shall be retired except for disability or on account of having reached the age of sixty-four years until he shall have served at least one year in such rank.[2] *Act of June 12, 1906 (34 Stat. 245)*.

[1] For the sections providing method of procedure see paragraph 982, post.

[2] See paragraph 655, ante, as to section 7, Act of June 18, 1878 (20 Stat. 150), providing that volunteer service shall be counted in computing service for longevity pay and retirement.

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973. *Head of a staff department.*—Any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for the retirement of such corps or department chief. *Sec. 26, Act of Feb. 2, 1901 (31 Stat. 755).*

974. *Limitation to retired pay above grade of major.*—Retired officers of the Army above the grade of major, heretofore or hereafter assigned to active duty, shall hereafter receive their full retired pay and shall receive no further pay or allowances from the United States. *Act of Mar. 2, 1905 (33 Stat. 831).*

975. *Pay and allowances on active duty.*—A colonel or lieutenant-colonel heretofore or hereafter assigned to active duty shall hereafter receive the same pay and allowances as a retired major would receive under a like assignment. *Act of June 12, 1906 (34 Stat. 245).*

RETIRING BOARDS.

976. *Composition of retiring board.*—The Secretary of War, under the direction of the President, shall, from time to time, assemble an Army retiring board, consisting of not more than nine nor less than five officers, two-fifths of whom shall be selected from the Medical Corps. The board, excepting the officer selected from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of.[1] *Sec. 1246, R. S.*

977. *Oath of members.*—The members of said board shall be sworn in every case to discharge their duties honestly and impartially. *Sec. 1247, R. S.*

978. *Powers and duties.*—A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose. *Sec. 1248, R. S.*

979. *Findings.*—When the board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, has produced his incapacity, and whether such cause is an incident of service. *Sec. 1249, R. S.*

980. *Revision by the President.*—The proceedings and decision of the board shall be transmitted to the Secretary of War, and shall be laid by him before the President for his approval or disapproval and orders in the case. *Sec. 1250, R. S.*

981. *Disability incident to service.*—When a retiring board finds that an officer is incapacitated for active service, and that his inca-

[1] For decisions upon questions arising in connection with retiring boards see Dig. Op. J. A. G., 983-991, edition of 1912.

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pacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers. *Sec. 1251, R. S.*

982. *Disability not incident to service.*—When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President,[1] the officer shall be retired from active service, or wholly retired from the service, as the President may determine. The names of officers wholly retired from the service shall be omitted from the Army Register.[2] *Sec. 1252, R. S.*

983. *Officers entitled to a hearing.*—Except in cases where an officer may be retired by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it.[3] *Sec. 1253, R. S.*

984. *To be retired on actual rank.*—Officers hereafter retired from active service shall be retired upon the actual rank held by them at the date of retirement. *Sec. 1254, R. S.*

985. *Officers retired on actual rank.*—That all officers of the Army who have been heretofore retired by reason of disability arising from wounds received in action shall be considered as retired upon the actual rank held by them, whether in the regular or volunteer service, at the time when such wound was received, and shall be borne on the retired list and receive pay hereafter accordingly; and this section shall be taken and construed to include those now borne on the retired list placed upon it on account of wounds received in action: *Provided*, That no part of the foregoing act shall

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[1] The finding of a retiring board, approved by the President, is conclusive as to the facts. The board finds the facts and the President approves or disapproves the finding, but the law does not empower him to modify the finding or to substitute a different one. There is here a judicial power vested in the two, and not in the President acting singly, and when the power has once been fully exercised it is exhausted as to the case. (Dig. Opin. J. A. G., 987; U. S. *v.* Burchard, 125 U. S., 179; U. S. *v.* Miller, 19 Ct. Cls., 338.)

When the President has once acted upon the findings of a retiring board his power over the case is exhausted and his subsequent orders in respect to such officer are void for want of authority. (XIX Opin. Att. Gen., 202.)

[2] To be "wholly retired," in accordance with the terms of this section, is to be put out of the Army and out of office. An officer wholly retired becomes a civilian, and can be readmitted to the service only by a new appointment. (Miller *v.* U. S., 19 Ct. Cls., 338.)

[3] When the President approves and acts upon the report of a retiring board he thereby determines that the officer has had a full and fair hearing. (Miller *v.* U. S., 19 Ct. Cls., 338. But see XVI Att. Gen. Opin., 20.)

An officer, on being wholly retired, becomes a civilian, and can be readmitted to the service only by a new appointment. But he can not be appointed at once to the retired list. A civilian can not be appointed as a retired officer. He must first be appointed an officer on the active list, of a certain rank. None but a commissioned officer on the active list of the Army can be placed on the retired list. (XIX Opin. Att. Gen., 202.)

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apply to those officers who had been in service as commissioned officers twenty-five years at the date of their retirement; nor to those retired officers who had lost an arm or leg, or has an arm or leg permanently disabled by reason of resection, on account of wounds, or both eyes by reason of wounds received in battle; and every such officer now borne on the retired list shall be continued thereon notwithstanding the provisions of section two chapter thirty-eight act of March thirty, eighteen hundred and sixty-eight; *and be it also provided*, that no retired officer shall be affected by this act, who has been retired or may hereafter be retired on the rank held by him at the time of his retirement.[1] *Sec. 2, Act of Mar. 3, 1875 (18 Stat. 512).*

986. *Status.*—Officers retired from active service shall be withdrawn from command and from the line of promotion. *Sec. 1255, R. S.*

987. *Vacancies caused by retirement.*—When any officer in the line of promotion is retired from active service, the next officer in rank shall be promoted to his place, according to the established rules of the service; and the same rule of promotion shall be applied, successively, to the vacancies consequent upon such retirement. *Sec. 1257, R. S.*

988. *Rights and liabilities.*—Officers retired from active service shall be entitled to wear the uniform of the rank on which they may be retired. They shall continue to be borne on the Army Register, and shall be subject to the rules and articles of war, and to trial by general court-martial for any breach thereof.[2] *Sec. 1256, R. S.*

989. *Clerks to retired officers prohibited.*—Hereafter no allowance or compensation for clerks or secretaries of officials of the United States retired from active service shall be authorized. *Act of July 1, 1898 (30 Stat. 644).*

990. *Holding two offices by persons receiving $2,500 forbidden.—Retired officers excepted.*—No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall

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[1] The act of March 3, 1875, should be construed to have a prospective effect only. (XIX Opin. Att. Gen., 610.)

[2] A retired officer is subject to trial by court-martial, and a court-martial has jurisdiction of offenses committed after the officer was retired. (Runkle *v.* U. S., 19 Ct. Cls., 396.)

An officer on the retired list, being as much a part of the Army as any officer on the active list, would be subject to trial by general court-martial independently of the provision, specifically so subjecting him, of section 1256, Revised Statutes. (Dig. Opin. J. A. G., par. 2200, edition 1901.)

A retired officer, upon conviction, may be sentenced similarly to an officer on the active list, except that the punishments of suspension and loss of files or relative rank are not appropriate to the status of a retired officer. (Id., note 2.)

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not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate. *Sec. 2, Act of July 31, 1894 (28 Stat. 205).*

991. *Restoration of dismissed officers.*—No officer of the Army who has been or may be dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment confirmed by the Senate.[1] *Sec. 1228, R. S.*

992. *Officers dropped for desertion.*—The President is authorized to drop from the rolls of the Army for desertion any officer who is absent from duty three months without leave; and no officer so dropped shall be eligible for reappointment. And no officer in the military or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.[2] *Sec. 1229, R. S.*

993. *Same, amendment.*—That the President be, and he is hereby, authorized to drop from the rolls of the Army any officer who is absent from duty three months without leave, or who has been absent in confinement in a prison or penitentiary for more than three months after final conviction by a civil court of competent jurisdiction; and no officer so dropped shall be eligible for reappointment.[3] *Act of Jan. 19, 1911 (36 Stat. 894).*

994. *Officers dismissed by President may demand trial.*—When any officer, dismissed by order of the President, makes, in writing,

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[1] The practical results of this statute, in connection with other provisions of law bearing upon the subject, are these: That in time of war the President may dismiss an officer from service at any moment and for any cause; that in time of peace he may dismiss him for cause, with the cooperation of a court-martial; or remove him without cause with the consent of the Senate. (Street *v.* U. S., 24 Ct. Cls., 248; Blake *v.* U. S., 103 U. S., 227; McElrath *v.* U. S., 102 U. S., 426; Fletcher *v.* U. S., 26 Ct. Cls., 541.)

The President has the power to remove an officer of the Army by the appointment of another in his place, by and with the advice and consent of the Senate, and such power is not withdrawn by the provisions of section 5 of the act of July 13, 1866 (sec. 1229, R. S.), and this provision does not restrict the power of the President, by and with the advice and consent of the Senate, to displace officers of the Army and Navy by the appointment of others in their places. (Keyes *v.* U. S., 109 U. S., 336, 339; Blake *v.* U. S., 103 U. S., 227; McElrath *v.* U. S., 103 U. S., 426; Mimmack *v.* U. S., 97 U. S., 426; U. S. *v.* Corson, 114 U. S., 619; Montgomery *v.* U. S., 19 Ct. Cls., 370; Bonnett *v.* U. S., id., 379; Palen *v.* U. S., id., 389; McBlair *v.* U. S., id., 528; Vanderslice *v.* U. S., id., 480; XV Opin. Att. Gen., 407.)

As to the distinction between a *removal from office* and the *punishment* of dismissal by sentence of a general court-martial, see Dig. Opin. J. A. G., 819, E. 2a.

[2] The jurisdiction to find and determine the fact of desertion, under this section, is vested in the President alone, and his decision thereon can not be reviewed by the courts. (Newton *v.* U. S., 18 Ct. Cls., 435.) The discharge of an officer does not relieve the Government from its obligations until he is notified of the fact and actually discharged from service. (Gould *v.* U. S., 19 Ct. Cls., 593.)

[3] This paragraph amends section 1229 of the Revised Statutes as contained in the preceding paragraph.

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an application for trial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.[1] *Sec. 1230, R. S.*

995. *Accepting or holding civil office.*—No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated.[2] *Sec. 1222, R. S.*

996. *Duties upon which officers of the Army are not to be employed.*—No officer of the Army shall be employed on civil works or internal improvements, or be allowed to engage in the service of any incorporated company, or be employed as acting paymaster or disbursing agent of the Indian Department, if such extra employment requires that he shall be separated from his company, regiment, or corps, or if it shall otherwise interfere with the performance of the military duties proper. *Sec. 1224, R. S., as amended by Act of Feb. 27, 1877 (19 Stat. 243).*

997. *Accepting diplomatic or consular office.*—Any officer of the Army who accepts or holds any appointment in the diplomatic or consular service of the Government shall be considered as having

[1] This statute was held by the Attorney-General (XII Opins., 4) not to be unconstitutional, in that it was not "obnoxious to the objection that it invades or frustrates the power of the President to dismiss an officer." More serious objections to its constitutionality are believed to be: (1) That it authorizes the subjecting to military trial of a civilian; (2) that in restoring an officer to the Army it substitutes the action of a court-martial for the appointing power of the President.

The statute does not indicate within what period after dismissal the application for a trial should be made. It can only be said that, in preferring it, due diligence should be exercised—that it should be presented within a reasonable time. *Held*, that a party who (without any sufficient excuse) delayed for *nine* years to apply for a trial under the statute might well be regarded as having waived his right thereto. (IV Opin. Att. Gen., 170; V id., 384.)

To take advantage of the benefit conferred by this section the officer must apply for trial within a reasonable time after dismissal, or acquiescence will be presumed. A delay of nine years in a particular case held to create such presumption of acquiescence. (Newton *v.* U. S., 18 Ct. Cls., 435; Germaine *v.* U. S., 26 id., 383.)

Where the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. (Collins *v.* U. S., 15 Ct. Cls., 22.) For a list of officers so reinstated see Collins case. (14 Ct. Cls., 568, 571.)

[2] Where an officer of the Army was tendered a place on a "board of experts" created by a city ordinance to determine the most durable and best pavement for the streets of a city, advised that, in view of the provisions of section 1222 of the Revised Statutes, the place be not accepted by the officer. (XVIII Opin. Att. Gen., 11.)

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resigned his place in the Army, and it shall be filled as a vacancy.[1] *Sec. 1223, R. S.*

998. *Supernumerary officers may, on their own request, be discharged with certain pay.*—That any officer who is supernumerary to the permanent organization of the Army as provided by law may, at his own request, be honorably discharged from the Army, and shall thereupon receive one year's pay for each five years of his service, but no officer shall receive more than three year's pay in all. *Act of June 30, 1882 (22 Stat. 118).*

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[1] The act of March 30, 1868 (15 Stat. 58), which is embodied in section 1223 of the Revised Statutes, applied to officers on the retired as well as on the active list, and it made the acceptance of the diplomatic vacate the military office *eo instanti;* the vacancy thus created necessarily continuing until filled in the usual way. (XIX Opin. Att. Gen., 610.)

The act of July 31, 1894 (28 Stat. 205), paragraph 990, ante, does not authorize a retired officer to accept a position prohibited by this paragraph.

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CHAPTER XXV.

BREVETS—UNIFORM AND TITLE OF EX-OFFICERS—MEDALS OF HONOR—CERTIFICATES OF MERIT—FOREIGN DECORATIONS.

Brevets:	Par.
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Same—uniform of highest rank in regulars or volunteers during War with Spain	1009
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Same—adopted by military societies of men who served during Chinese relief expedition	1024
Same—unlawfully wearing in the District of Columbia the insignia, badge, etc., of the military order of the Loyal Legion, Grand Army of the Republic, etc	1025

BREVETS.

999. *Brevet rank.*—The President, by and with the advice and consent of the Senate, may in time of war confer commissions by brevet upon commissioned officers of the Army for distinguished conduct and public service in presence of the enemy.[1] *Sec. 1209, R. S.*

[1] Several brevet nominations were submitted to the Senate in the first session of the Fifty-seventh Congress (1901–2). The Committee on Military Affairs submitted a report (S. Doc. No. 195, 57th Cong., 2d sess.) upon these nominations. The committee concluded that there existed no authority of law to issue brevet commissions in time of peace. Consequently so long as section 1209, Revised Statutes, remains unchanged brevet commissions will be issued only in time of war.

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1000. *Same—For gallant service against hostile Indians.*—The President of the United States be, and he is hereby, authorized and empowered, at his discretion, to nominate and, by and with the advice and consent of the Senate, to appoint to brevet rank all officers of the United States Army now on the active or retired list who by their department commander, and with the concurrence of the Commanding General of the Army, have been or may be recommended for gallant service in action against hostile Indians since January first, eighteen hundred and sixty-seven. *Sec. 1, Act of Feb. 27, 1890 (26 Stat. 13).*

1001. *Same—Shall bear date from particular action or service.*—Brevet commissions shall bear date from the particular action or service for which the officers were brevetted. *Sec. 1210, R. S.*

1002. *Same.—Shall bear date from passage of act.*—Such brevet commissions as may be issued under the provisions of this act shall bear date only from the passage of this act: *Provided, however*, That the date of the particular heroic act for which the officer is promoted shall appear in his commission. *Sec. 2, Act of Feb. 27, 1890 (26 Stat. 13).*

1003. *Same—To be honorary.*—Brevet rank shall be considered strictly honorary, and shall confer no privilege of precedence or command not already provided for in the statutes which embody the rules and articles governing the Army of the United States. *Sec. 3, id., 14.*

1004. *Same—Only when actually engaged in hostilities.*—Officers of the Army shall only be assigned to duty or command according to their brevet rank when actually engaged in hostilities.[1] *Act of Mar. 3, 1883 (22 Stat. 457).*

1005. *Same—Shall wear uniform of actual rank.*—No officer shall be entitled, on account of having been brevetted, to wear, while on duty, any uniform other than that of his actual rank. *Sec. 1212, R. S.*

1006. *Same—Shall be addressed by title of actual rank.*—No officer shall be addressed in orders or official communications by any title other than that of his actual rank *Sec. 1212, R. S.*

1007. *Same—Uniform of highest volunteer rank.*—All officers who have served during the rebellion as volunteers in the Army of the United States, and have been honorably mustered out of the volunteer service, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held,

[1] When an officer has been duly assigned to duty or command according to a certain brevet rank, that rank becomes his actual military rank for the period of the assignment. He is empowered to exercise the authority which belongs to such rank under the circumstances, to wear the uniform, and to be addressed by the title of such rank, etc. *Held*, however, that a colonel, assigned to command according to a brevet rank of general, was not entitled to the aids-de-camp of a general except by the authority of the Secretary of War. (Dig. Opin. J. A. G., 969 B 1, edition, 1912.)

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by brevet or other commissions, in the volunteer service. The highest volunteer rank which has been held by officers of the Regular Army shall be entered, with their names, respectively, upon the Army Register. But these privileges shall not entitle any officer to command, pay, or emoluments. *Sec. 1226, R. S.*

1008. *Same—Uniform of highest regular rank.*—All officers who have served during the rebellion as officers of the Regular Army of the United States, and have been honorably discharged or resigned from the service, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held, by brevet or other commission, as is now authorized for officers of volunteers by section twelve hundred and twenty-six, Revised Statutes. *Act of Feb. 4, 1897 (29 Stat. 511).*

1009. *Same—Uniform of highest rank in regulars or volunteers during war with Spain.*—All officers who have served during the war with Spain, or since, as officers of the Regular or Volunteer Army of the United States, and have been honorably discharged from the service, by resignation or otherwise, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held by brevet or other commission in the regular or volunteer service. *Sec. 34, Act of Feb. 2, 1901 (31 Stat. 757).*

1010. *Discrimination against persons wearing uniforms.*—Hereafter no proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, the District of Alaska or Insular possession of the United States, shall make, or cause to be made, any discrimination against any person lawfully wearing the uniform of the Army, Navy, Revenue-Cutter Service or Marine Corps of the United States because of that uniform, and any person making, or causing to be made, such discrimination shall be guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars.[1] *Act of Mar. 1, 1911 (36 Stat. 963).*

1011. *Foreign decorations.*—That no decoration, or other thing the acceptance of which is authorized by this act, and no decoration heretofore accepted, or which may hereafter be accepted, by consent

[1] The following States have laws prohibiting anyone not in military service from wearing military uniforms: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.

The following States prohibit the wearing of National Guard uniform by anyone not a member of the Guard: Colorado, Massachusetts, and Wyoming.

The following States have laws prohibiting discrimination against uniforms: Connecticut, Florida, Massachusetts, Minnesota, New Hampshire, New York, Oklahoma, Pennsylvania, Rhode Island, and Wyoming.

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of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same. *Sec. 2, Act of Jan. 31, 1881 (21 Stat. 604)*.

1012. *Same—To be tendered through Department of State.*—That hereafter any present, decoration, or other thing which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress. *Sec. 3, Id.*

MEDALS OF HONOR.

1013. *Same—President may cause to be issued.*—That the President cause to be struck, from the dies recently prepared at the United States Mint for that purpose, "medals of honor" additional to those authorized by the act (resolution) of July 12, 1862, and present the same to such officers, noncommissioned officers, and privates as have most distinguished, or may hereafter most distinguish themselves in action.[1] *Sec. 6, Act of Mar. 3, 1863 (12 Stat. 751)*.

1014. *Same—May be awarded after separation from the service.*—For three thousand medals of honor to be prepared, with suitable emblematic devices, upon the design of the medal of honor heretofore issued, or upon an improved design, together with appropriate rosettes or other insignia to be worn in lieu of the medal, and to be presented by direction of the President, and in the name of

[1] This provision was not embraced in the Revised Statutes. Medals of honor will be awarded by the President to officers and men who most distinguish themselves in action. (Pars. 182, 183, and 188, A. R., 1913; see also G. O. 42, A. G. O., 1897, and G. O. 135, A. G. O., 1899.)

As section 6 of the act of March 3, 1863 (12 Stat. 751), provides for the award of the medal of honor under certain conditions to officers, noncommissioned officers, and privates only, *held*, that it may not be awarded for distinguished services in action by a contract or acting assistant surgeon, who is no longer in the service. (Dig. Opin. J. A. G., 1b, 665, edition, 1912.)

See also 20 Opin. Atty. Gen., 421, in which advice was given not to grant the medal, as when the application was received, nearly 28 years after the gallant conduct, there was no official record on file in the War Department to substantiate the claim.

See 24 Opin. Atty Gen., 580, in which it is held that the fact that after the application or recommendation is made the applicant leaves the service does not prevent the President from making the award.

A medal of honor is a recognition of gallantry which is granted by authority of Congress to such officers or enlisted men "as have most distinguished themselves in action." When a medal is conferred there is included in the grant a conveyance of ownership of the medal, regarded as a chattel, which becomes the property of the grantee and is subject to such disposition as he may see fit to make of it as a part of his personal estate, subject, however, to the qualification that it may be worn and used as a medal of honor only by the person upon whom it was originally conferred in recognition of his military services. (Id., 1c, 665.)

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Congress, to such officers, noncommissioned officers, and privates as have most distinguished, or may hereafter most distinguish, themselves by their gallantry in action, twelve thousand dollars: *Provided*, That the Secretary of War be, and he is hereby, authorized and directed to use so many of the medals and rosettes or other insignia provided for by this Act as may be necessary to replace the medals that have been issued under the joint resolution of Congress approved July twelfth, eighteen hundred and sixty-two, and section six of the Act of Congress approved March third, eighteen hundred and sixty-three: *And provided further*, That whenever it shall appear from official records in the War Department that any officer or enlisted man of the Army so distinguished himself in action as to entitle him to the award of the Congressional medal of honor under the provisions of the sixth section of the Act of Congress approved March third, eighteen hundred and sixty-three, entitled "An Act making appropriations for the sundry civil expenses of the Government for the year ending June thirtieth, eighteen hundred and sixty-four, and for the year ending the thirtieth of June, eighteen hundred and sixty-three, and for other purposes," the fact that the person who so distinguished himself has since become separated from the military service, or that the award of the medal to him was not specifically recommended or applied for while he was in the said service, shall not be held to prevent the award and presentation of the medal to such person under the provisions of the law hereinbefore cited.[1] *Act of Apr. 23, 1904 (33 Stat., 274).*

1015. *Same—May be replaced when lost or destroyed.*—That in any case where the President of the United States has heretofore, under any Act or resolution of Congress, caused any medal to be made and presented to any officer or person in the United States on account of distinguished or meritorious services, on a proper showing made by such person to the satisfaction of the President that such medal

[1] The act of April 23, 1904 (33 Stat. 274), provides, "Whenever it shall appear from official records in the War Department that any officer or enlisted man of the Army so distinguished himself in action as to entitle him to the award" of the medal of honor under the then existing law, the award shall not be prevented by the fact that the person has since become separated from military service, or that it was not recommended or applied for while he was in the service. *Held*, that the "official record" is one that must have been made by an officer of the Army pursuant to statute, regulation, orders, or custom. *Held*, further, that an oral recommendation was not an "official record," and, therefore, could not be the basis of the award of a medal. (Dig. Opin. J. A. G., A 2a, 665; see, also, Cir. 22, 1905, War. Dept.)

The recommendation for a medal of honor was not made until more than a year had elapsed after the gallant conduct upon which it was based, i. e., July 1, 1863. *Held*, that under the legislative rule fixed by the act of April 23, 1904 (33 Stat. 274), if it shall appear from the official records in the War Department that an officer or enlisted man has so distinguished himself in action as to entitle him to the award under the act of March 3, 1863 (12 Stat. 751), the award may be made. (Id., 2d, 666.)

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has been lost or destroyed through no fault of the beneficiary, and that diligent search has been made therefor, the President is hereby authorized to cause to be prepared and delivered to such person a duplicate of such medal, the cost of which shall be paid out of any money in the Treasury not otherwise appropriated.[1] *Joint resolution No. 23 of Apr. 15, 1904 (33 Stat. 588).*

1016. *Same—Not required to surrender old when replaced by new.*—The holders of medals of honor under the Act approved July twelfth, eighteen hundred and sixty-two, and section six of the Act approved March third, eighteen hundred and sixty-three, shall not be required to surrender such medals in case such medals are replaced, in pursuance of the provisions of the Act of Congress approved April twenty-third, nineteen hundred and four; and that wherever the holders of such medals of honor have surrendered them, in order to receive the medals provided for by said Act approved April twenty-third, nineteen hundred and four, such medals shall be returned to them: *Provided*, That no recipient of both medals shall wear both medals at the same time. *Joint resolution No. 17 of Feb. 27, 1907 (34 Stat. 1422).*

1017. *Same—Rosette, or knot, and ribbon to be worn in lieu of and with.*—The Secretary of War be, and he is hereby, authorized to issue to any person to whom a medal of honor has been awarded, or may hereafter be awarded, under the provisions of the joint resolution approved July twelfth, eighteen hundred and sixty-two, and the act approved March third, eighteen hundred and sixty-three, a rosette or knot to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette, or knot, and ribbon to be each of a pattern to be prescribed and established by the President of the United States; and any appropriation that may hereafter be available for the contingent expenses of the War Department is hereby made available for the purposes of this act: *Provided*, That whenever a ribbon issued under the provisions of this act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it is issued, the Secretary of War shall cause a new ribbon to be issued to such person without charge therfor. *Joint resolution No. 51, May 2, 1896 (29 Stat. 473).*

1018. *Certificates of merit.*—When any enlisted man of the Army shall have distinguished himself in the service the President may, at the recommendation of the commanding officer of the regiment or the chief of the corps to which such enlisted man belongs, grant him

[1] *Held*, that the President has no authority under the act of April 23, 1904 (33 Stat. 274), to refuse to replace a medal that was awarded under the joint resolution of July 12, 1862 (12 Stat. 623), and the act of March 3, 1863 (12 Stat. 751), when the same is presented for that purpose by its owner. (Dig. Opin. J. A. G., 2b, 665.)

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a certificate of merit.[1] *Sec. 1216, R. S., as amended by Act of Mar. 29, 1892 (27 Stat. 12).*

1019. *Corps badges*[2] *and insignia of societies.*—All persons who have served as officers, noncommissioned officers, privates, or other enlisted men in the Regular Army, volunteer or militia forces of the United States, during the war of the rebellion, and have been honorably discharged from the service or still remain in the same, shall be entitled to wear, on occasions of ceremony, the distinctive Army badge ordered for or adopted by the Army corps and division, respectively, in which they served. *Sec. 1227, R. S.*

1020. *Military society badges.*—That the distinctive badges adopted by military societies of men who served in the armies and navies of the United States in the war of the Revolution, the war of eighteen hundred and twelve, the Mexican war, and the war of the rebellion, respectively, may be worn upon all occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organizations in their own right.[3] *Joint resolution No. 50, of Sept. 25, 1890 (26 Stat. 681).*

1021. *Distinctive badge adopted by Regular Army and Navy Union.*—That the distinctive badge adopted by the Regular Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men in the Army and Navy of the United States who are members of said organization. *Joint resolution No. 26, of May 11, 1894 (28 Stat. 583).*

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[1] For section 2, act of February 9, 1891 (26 Stat. 737), providing that a certificate of merit granted to an enlisted man for distinguished service shall entitle him, from the date of such service, to additional pay at the rate of $2 per month while he is in the military service, although such service may not be continuous, see paragraph 719, ante.

See, also, 24 Op. Atty. Gen., 127, Sept. 23, 1902, and IX Comp. Dec., 160, Oct. 24, 1902.

In Bell *v.* U. S., 28 Ct. Cls., 462, it was held that a soldier to whom, when a member of an infantry regiment, had been granted a certificate of merit, was entitled to continue to receive the additional pay after reenlisting in the "general messenger service."

See McNamara *v.* U. S., 28 Ct. Cls., 416, where it is held that the act of February 9, 1891, is retroactive, and entitled the beneficiary to the additional pay from the date of the service for which the certificate was awarded.

See, to a similar effect, the opinion of the Attorney-General in XVI Opins., 9; also the subsequent G. O. 28, Hdqrs. of Army, 1878.

[2] See Dig. Op. J. A. G., 668–9 B 1–2. Also G. O. No. 4, War Dept., 1905, as amended by G. O. 129, 1908. See also Cir. 82, War Dept. 1908, and G. O. 96 and 97, War Dept., 1909.

For section 1296, Revised Statutes, authorizing the President to prescribe the uniform of the Army and quantity and kind of clothing which shall be issued annually to the troops of the United States, see paragraph 571, ante.

[3] *Held*, that the words "in their own right" which occur in those laws which authorize the wearing of certain society badges mean "right" because of their own service or because of their kinship to one who had been in the service. (Dig. Opin. J. A. G., A 1,668.)

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1022. *Same—Adopted by Army and Navy Union.*—The distinctive badge adopted by the Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organization. *Joint resolution No. 18 of Mar. 2, 1907 (34 Stat. 1423).*

1023. *Same—Adopted by military societies of men who served during Spanish-American War.*—The distinctive badges adopted by military societies of men who served in the armies and navies of the United States during the Spanish-American war and the incident insurrection in the Philippines may be worn, upon all occasions of ceremony, by officers and men of the Army and Navy of the United States who are members of said organizations in their own right.[1] *Sec. 41, Act of Feb. 2, 1901 (31 Stat. 758).*

1024. *Same—Adopted by military societies of men who served during Chinese relief expedition.*—The distinctive badges adopted by military societies of men who served in the armies and navies of the United States during the Chinese relief expedition of nineteen hundred may be worn upon all occasions of ceremony by officers and men of the Army and Navy of the United States who are members of said organization in their own right. *Joint resolution No. 2 of Jan. 12, 1903 (32 Stat. 1229).*

1025. *Same—Unlawfully wearing in the District of Columbia the insignia, badge, etc., of the Military Order of the Loyal Legion, Grand Army of the Republic, etc.*—Whoever, in the District of Columbia, not being a member of the Military Order of the Loyal Legion of the United States, of the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Union Veteran's Union, of the Union Veteran Legion, of the United Spanish War Veterans, of the National Society of the Daughters of the American Revolution, and not entitled under the rules of the order to wear the same, willfully wears or uses the insignia, distinctive ribbon, or badge of membership, rosette, or button thereof, or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. *Act of Mar. 15, 1906 (34 Stat. 62).*

[1] An organization entitled "Batson's squadron of Philippine cavalry" was formed from among the civilian employees of the Quartermaster's Department during the Philippine insurrection. Its employment was assimilated, in all of its essential incidents, to that of the Philippine Scouts and guides whose services are obtained by contract and paid for out of the appropriation for incidental expenses. But the squadron was actually paid out of insular funds furnished for that purpose to the Quartermaster's Department. *Held*, therefore, that the members of that squadron are not entitled to the Philippine campaign badge. (Dig. Opin. J. A. G., 669 B 3.)

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CHAPTER XXVI.

ENLISTED MEN.

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ENLISTMENT.

1026. *General qualifications.*—Recruits enlisting in the Army must be effective and able-bodied men, and between the ages of sixteen

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and thirty-five years, at the time of their enlistment.[1] This limitation as to age shall not apply to soldiers reenlisting. *Sec. 1116, R. S.*

1027. *Persons not to be enlisted.*—No minor under the age of sixteen years,[2] no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.[3] *Sec. 1118, R. S.*

1028. *Enlistment of minors.*—No person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, That such minor has such parents or guardians entitled to his custody and control. *Sec. 1117, R. S.*

1029. *Age, citizenship.*—In time of peace no person (except an Indian) who is not a citizen of the United States, or who has not made legal declaration of his intention to become a citizen of the United States, or who can not speak, read, and write the English language, or who is over thirty-five years of age, shall be enlisted for the first enlistment in the Army.[4] *Sec. 2, Act of Aug. 1, 1894 (28 Stat. 216), as amended by Sec. 4, Act of Mar. 2, 1899 (30 Stat. 978).*

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[1] The requirements of section 1116, Revised Statutes, in respect to the limits of age for recruits upon their original enlistment into the military service have been modified by the act of February 27, 1893 (27 Stat. 486), which established the superior limit at 30 years in time of peace, and by section 4 of the act of March 2, 1899 (30 Stat. 978), which fixes the limits of age for original enlistments at from 18 to 35 years.

Enlistment is a contract, but it is one of those contracts which changes the status, and where that is changed no breach of contract destroys the new status or relieves from the obligations which its existence imposes. * * * By enlistment the citizen becomes a soldier. His relations to the State and the public are changed. He acquires a new status, with correlative rights and duties, and although he may violate his contract obligations, his status as a soldier is unchanged. He can not of his own volition throw off the garments he has once put on, nor can he, the State not objecting, renounce his relations and destroy his status on the plea that, if he had disclosed truthfully the facts, the other party, the State, would not have entered into the new relations with him or permitted him to change his status. (U. S. *v.* Grimley, 137 U. S., 147.)

See Dig. Op. J. A. G., chapter Enlistment, 602–624.

The age of enlistment for minors in the Navy is 14 years. (Act of Aug. 22, 1912, 37 Stat. 356.)

[2] As to minimum age of enlistment, see paragraph 1026, ante.

[3] The enlistment contract of a minor is void when the recruit is under 16, with or without the consent of the parent. (In re Lawler, 40 Fed. Rep., 233.) It is not void, but voidable only, as to minors between 16 and 21. (U. S. *v.* Morrissey, 137 U. S., 157.) It is not voidable at the instance of the minor. (Id.) It is voidable at the instance of the parent or guardian. (Com. *v.* Blake, 8 Phil., 523; Turner *v.* Wright, 5 id., 296; Menges *v.* Camac, 1 Serg. and R., 87; Henderson *v.* Wright, id., 299; Seavey *v.* Seymour, 3 Cliff., 439; In re Cosenow, 37 Fed. Rep., 668; In re Hearn, 32 id., 141; In re Davison, 21 id., 618; U. S. *v.* Wagner, 24 id., 135; In re Dohrendorf, 40 Fed. Rep., 148; In re Spencer, id., 149; In re Lawler, id., 233; In re Wall, 8 id., 85.)

A minor's contract of enlistment is voidable, not void, and is not so voidable at the instance of the minor. If, after enlistment, he commits an offense, is actually arrested, and in course of trial before the contract is duly avoided, he may be tried and punished. (In re Wall., 8 Fed. Rep., 85; see also Barrett *v.* Hopkins, 7 id., 312.)

[4] See paragraph 349, Army Regulations, 1913. See par. 349, ante, Act of Mar. 2, 1903 (32 Stat. 934), authorizing enlistment of citizens of Porto Rico in the Regular Army.

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1030. *Term of enlistment.*—That hereafter all enlistments in the Army shall be for the term of three years, and no soldier shall be again enlisted in the Army whose service during his last preceding term of enlistment has not been honest and faithful.[1] *Sec. 2, Act of Aug. 1, 1894 (28 Stat. 216).*

1031. *Enlistment and enlistment in the reserve.*—For the purpose of utilizing as an auxiliary to the Army Reserve hereinafter provided for the services of men who have had experience and training in the Regular Army, in time of war or when war is imminent, and after the President shall, by proclamation, have called upon honorably discharged soldiers of the Regular Army to present themselves for reenlistment therein within a specified period, subject to such conditions as may be prescribed in said proclamation, any person who shall have been discharged honorably from said Army, with character reported as at least good, and who having been found physically qualified for the duties of a soldier, if not over forty-five years of age, shall reenlist in the line of said Army or in the Signal or Hospital Corps thereof within the period that shall be specified in said proclamation, shall receive on so reenlisting a bounty which shall be computed at the rate of eight dollars for each month for the first year of the period that shall have elapsed since his last discharge from the Regular Army and the date of his reenlistment therein under the terms of said proclamation; at the rate of six dollars per month for the second year of such period; at the rate of four dollars per month for the third year of such period; and at the rate of two dollars per month for any subsequent year of such period, but no bounty in excess of three hundred dollars shall be paid to any person under the terms of this act.

And that on and after November first, nineteen hundred and twelve, all enlistments in the Regular Army shall be for the term of seven years, the first four years in the service with the organizations of which those enlisting shall form a part, and, except as otherwise provided herein, the last three years on furlough and attached to the Army Reserve hereinafter provided for: *Provided*, That at the expiration of four years' continuous service with such organizations, either under a first or any subsequent enlistment, any soldier may be reenlisted for another period of seven years, as above provided for,

[1] The contract of enlistment is an entirety. If service for any portion of the time is criminally omitted the pay and allowances for faithful services are not earned. (Lander *v.* U. S., 92 U. S., 77.)

This section operates to repeal section 119, Revised Statutes, and section 2 of the act of June 16, 1890 (26 Stat. 187), which fixed the term of enlistment in the Army at five years, which in turn has been repealed by the act of August 24, 1912 (37 Stat. 590), paragraph 1031, post. As to the reenlistment of men whose last preceding term of enlistment has not been honest and faithful, see paragraph 1052, post.

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in which event he shall receive his final discharge from his prior enlistment: *Provided further*, That any enlisted man, at the expiration of three years' continuous service with such organizations, either under a first or any subsequent enlistment, upon his written application, may be furloughed and transferred to the Army Reserve, in the discretion of the Secretary of War, in which event he shall not be entitled to reenlist in the service until the expiration of his term of seven years: *Provided further*, That for all enlistments hereafter accomplished under the provisions of this act, four years shall be counted as an enlistment period in computing continuous-service pay: *Provided further*, That hereafter the Army Reserve shall consist of all enlisted men who, after having served not less than four years with the organizations of which they form a part, shall receive furloughs without pay or allowances until the expiration of their terms of enlistment, together with transportation in kind and subsistence as provided for by this act in the case of discharged soldiers, but when any soldier is furloughed to the Reserve his accounts shall be closed and he shall be paid in full to the date such furlough becomes effective: *Provided further*, That any enlisted man, subject to good conduct and physical fitness for duty, upon his written application to that effect, shall have the right of remaining with the organization to which he belongs until the completion of his whole enlistment, without passing into the Reserve: *Provided further*, That except upon reenlistment after four years' service or as now otherwise provided for by law, no enlisted man shall receive a final discharge until the expiration of his seven-year term of enlistment, including his term of service in the Army Reserve, but any such enlisted man may be reenlisted for a further term of seven years under the same conditions in the Army at large, or, in the discretion of the Secretary of War, for a term of three years in the Army Reserve; and any person who may have been discharged honorably from the Regular Army, with character reported as at least good, and who has been found physically qualified for the duties of a soldier, if not over forty-five years of age, may be enlisted in the Army Reserve for a similar term of three years: *And provided further*, That in the event of actual or threatened hostilities the President, when so authorized by Congress, may summon all furloughed soldiers who belong to the Army Reserve to rejoin their respective organizations, and during the continuance of their service with such organizations they shall receive the pay and allowances authorized by law for soldiers serving therein, and any enlisted man who shall have reenlisted in the Army Reserve shall receive during such service the additional pay now provided by law for the soldiers of his arm of the service in their second enlistment period. Upon reporting for duty, and being found physically fit for service, they shall receive a sum equal

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to five dollars per month for each month during which they shall have belonged to the Reserve, as well as the actual cost of transportation and subsistence from their homes to the places at which they may be ordered to report for duty under such summons. *Sec. 2, Act of Aug. 24, 1912 (37 Stat. 590).*

1032. *Premium for recruit.*—A premium of two dollars shall be paid to any citizen, noncommissioned officer, or soldier for each accepted recruit he may bring to a recruiting rendezvous.[1] *Sec. 1120, R. S.*

1033. *Fraudulent enlistment.*—Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the sixty-second article of war. *Sec. 3, Act of July 27, 1892 (27 Stat. 278).*

1034. *Reenlistment.*—Hereafter any soldier honorably discharged at the termination of an enlistment period who reenlists within three months thereafter shall be entitled to continuous-service pay as herein provided, which shall be in addition to the initial pay provided for in this Act and shall be as follows, namely: For those whose initial pay as provided herein is thirty-six dollars or more an increase of four dollars monthly pay for and during the second enlistment, and a further increase of four dollars for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. For those whose initial pay as provided for herein is eighteen, twenty-one, twenty-four, or thirty dollars, an increase of three dollars monthly pay for and during the second enlistment, and a further increase of three dollars for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. For those whose initial pay as provided for herein is fifteen and sixteen dollars, an increase of three dollars monthly pay for and during the second and third enlistments each, and a further increase of one dollar for and during each subsequent enlistment up to and including the seventh, after which the pay shall remain as in the seventh enlistment. *Act of May 11, 1908 (35 Stat. 109).*

1035. *Period of enlistment.*—Hereafter any soldier honorably discharged at the termination of his first or any succeeding enlistment period who reenlists after the expiration of three months shall be regarded as in his second enlistment; that an enlistment shall not be regarded as complete until the soldier shall have made good any time lost during an enlistment period by unauthorized absences exceeding one day, but any soldier who receives an honorable discharge for the convenience of the Government after having served more than

[1] This statute is practically obsolete. It was last applied during the rebellion of 1861-1865 against the United States.

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half of his enlistment shall be considered as having served an enlistment period within the meaning of this Act; that the present enlistment period of men now in service shall be determined by the number of years continuous service they have had at the date of approval of this Act, under existing laws, counting three years to an enlistment, and the former service entitling an enlisted man to reenlisted pay under existing laws shall be counted as one enlistment period. *Id.*

TRANSFER OF ENLISTED MEN.

1036. *Transfer from military to naval service.*—Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of military law.[1] *Sec. 1421, R. S.*

1037. *Transfers to Hospital Corps.*—Any enlisted man in the Army shall be eligible for transfer to the Hospital Corps as a private. *Sec. 5, Act of Mar. 1, 1887 (24 Stat. 435).*

RETIREMENT.

1038. *Retirement of enlisted men.*—When an enlisted man shall have served[2] thirty years either in the Army, Navy, or Marine Corps, or in all, he shall, upon making application to the President, be placed upon the retired list, with seventy-five per centum of the pay and allowances he may then be in receipt of, and that said allowances shall be as follows: Nine dollars and fifty cents per month in lieu of rations and clothing and six dollars and twenty-five cents per month in lieu of quarters, fuel, and light: *Provided*, That in computing the necessary thirty years' time all service in the Army, Navy, and Marine Corps shall be credited.

SEC. 2. That all Acts and parts of Acts, so far as they conflict with the provisions of this Act, are hereby repealed. *Secs. 1 and 2, Act of Mar. 2, 1907 (34 Stat. 1217).*[3]

1039. *War service, etc., to be computed as double time.*—If said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be com-

[1] See paragraphs 114 and 115, Army Regulations, 1913.

[2] As to service as officers in the Volunteers, in the Porto Rico Regiment, and in the Philippine Scouts, see paragraphs 709 and 710, ante.

[3] This act amended the act of February 14, 1885 (23 Stat. 305), which created the retired list for enlisted men. (See Art. 134, A. R., 1913.)

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puted as double time in computing the thirty years necessary to entitle him to be retired.[1] *Act of Sept. 30, 1890 (26 Stat. 504).*

1040. *Credit for foreign service.*—Hereafter in computing length of service for retirement, credit shall be given the soldier for double the time of his actual service in Porto Rico, Cuba, or in the Philippine Islands.[2] *Act of May 26, 1900 (31 Stat. 209).*

1041. *Same.*—Hereafter in computing the length of service for retirement, credit shall be given soldiers for double the time of their actual service in China, Cuba, the Philippine Islands, the Island of Guam, Alaska, and Panama; but double credit shall not be given for service hereafter rendered in Porto Rico or the Territory of Hawaii. *Act of Apr. 23, 1904 (33 Stat. 264).*

1042. *Same*—Credit *not to be given in connection with enlistments subsequent to August 24, 1912.*—In computing length of service for retirement credit for double time for foreign service shall not be given to those who hereafter enlist: *And provided further*, That nothing in this provision shall be so construed as to forfeit credit for double time already accrued. *Act of Aug. 24, 1912 (37 Stat. 575).*

DISCHARGE.

1043. *Discharge by purchase.*—That in time of peace the President may, in his discretion and under such rules and upon such conditions as he shall prescribe, permit any enlisted man to purchase his discharge from the Army. The purchase money to be paid under this section shall be paid to a paymaster of the Army and be deposited to the credit of one or more of the current appropriations for the support of the Army, to be indicated by the Secretary of War, and be available for the payment of expenses incurred during the fiscal year in which the discharge is made.[3] *Sec. 4, Act of June 16, 1890 (26 Stat. 158).*

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[1] The act of February 14, 1885 (23 Stat. 305), which created the retired list for enlisted men, was amended by the act of September 30, 1890 (26 Stat. 504), by the addition of the proviso permitting war service during the war of the rebellion to be computed as double time in computing the thirty years' service necessary to entitle him to be retired.

It has been held by the Secretary of War that the term "war service," as used in the act of September 30, 1890, shall include service rendered as a commissioned officer, and that, for the purposes of this statute, the war began on April 15, 1861, and ended on April 2, 1866, as respects all theaters of operation, except the State of Texas, and as to that State that the war ended on April 20, 1866. (Circular No. 2, H. Q. A., Mar. 10, 1891.)

Upon the retirement of an enlisted man from active service he is entitled to transportation in kind to the place of his enlistment or to his home. Section 1290, Revised Statutes, does not apply to enlisted men transferred to the retired list, in that they are not discharged. (3 Dig. 2d Comp. Dec., par. 874; U. S. *v.* Tyler, 105 U. S., 244.)

[2] See paragraph 1042, post.

[3] As to discharge in general see fourth Article of War, page 581, post. See also Army Regulations, 1913, article 21, and Dig. Op. J. A. G., 427–463. Also G. O. No. 28, War Dept., March 28, 1913.

For return of honorable discharge see paragraph 214, ante.

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1044. *Dependency of parent.*—In the event of the enlistment of a soldier in the Army for the period required by law, and after the expiration of one year of service should either of his parents die, leaving the other solely dependent upon the soldier for support, such soldier may, upon his own application, be honorably discharged from the service of the United States upon due proof being made of such condition to the Secretary of War.[1] *Sec. 30, Act of Feb. 2, 1901 (31 Stat. 756).*

1045. *Transportation on discharge.*—Hereafter when an enlisted man is discharged from the service, except by way of punishment for an offense, he shall be entitled to transportation in kind and subsistence from the place of his discharge to the place of his enlistment, or to such other place within the continental limits of the United States as he may select, to which the distance is no greater than from the place of discharge to place of enlistment; but if the distance be greater he may be furnished with transportation in kind and subsistence for a distance equal to that from place of discharge to place of enlistment, or, in lieu of such transportation and subsistence, he shall, if he so elects, receive two cents a mile, except for sea travel, from the place of his discharge to the place of his enlistment.[2] *Act of Aug. 24, 1912 (37 Stat. 576).*

1046. *Sea travel.*—For sea travel on discharge * * * transportation and subsistence only shall be furnished to enlisted men.[2] *Act of Mar. 2, 1901 (31 Stat. 903).*

1047. *Lost certificate.*—Whenever satisfactory proof shall be furnished to the War Department that any officer or enlisted man who has been or shall hereafter be honorably discharged from the military service of the United States has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish to such officer or enlisted man, or to the widow of such officer or enlisted man, a certificate of such discharge, to be indelibly marked, so that it may be known as a certificate in lieu of a lost or destroyed discharge: *Provided*, That such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.[3] *Act of July 1, 1902 (32 Stat. 629).*

1048. *Issued under true name.*—The Secretary of War and the Secretary of the Navy be, and they are hereby, authorized and required to issue certificates of discharge or orders of acceptance of

[1] See G. O. No. 23, War Department, March 28, 1913.

[2] For statutes and regulations governing the payment of travel allowance to officers and enlisted men, see the chapter entitled The Pay Department (The Quartermaster Corps).

[3] This paragraph virtually takes the place of section 224, Revised Statutes.

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resignation, upon application and proof of identity, in the true name of such persons as enlisted or served under assumed names, while minors or otherwise, in the Army or Navy during any war between the United States and any other nation or people and were honorably discharged therefrom. Applications for said certificates of discharge or amended orders of resignation may be made by or on behalf of persons entitled to them, but no such certificate or order shall be issued where a name was assumed to cover a crime or to avoid its consequence. *Act of Aug. 22, 1912 (37 Stat. 324).*

1049. *Suspension of dishonorable discharge.*—That the reviewing authority may suspend the execution of a sentence of dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command in which the soldier is held, or by the Secretary of War: *And provided further*, That the authorized enlisted strength of the Army and of organizations thereof shall be exclusive of soldiers under sentences which include confinement and dishonorable discharge. *Act of Apr. 27, 1914 (38 Stat. 354).*

DESERTION.

1050. *Rights of citizenship forfeited for desertion, etc.*—All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.[1] *Sec. 1996, R. S.*

1051. *Certain soldiers and sailors exempted from the forfeitures of the last section.*—No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion. *Sec. 1997, R. S.*

[1] These penalties only take effect upon conviction by court-martial. (Kurtz *v.* Moffett, 115 U. S., 501.)

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1052. *Reenlistment of deserters and of soldiers whose last preceding term of enlistment was not honest and faithful.*—Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six of the Revised Statutes of the United States: *Provided*, That the provisions of this section and said section nineteen hundred and ninety-six shall not apply to any person hereafter deserting the military or naval service of the United States in time of peace: *And provided further*, That the loss of rights of citizenship heretofore imposed by law upon deserters from the military or naval service may be mitigated or remitted by the President where the offense was committed in time of peace and where the exercise of such clemency will not be prejudicial to the public interests: *And provided further*, That the provisions of section eleven hundred and eighteen of the Revised Statutes of the United States that no deserter from the military service of the United States shall be enlisted or mustered into the military service, and the provisions of section two of the Act of Congress approved August first, eighteen hundred and ninety-four, entitled "An Act to regulate enlistments in the Army of the United States," shall not be construed to preclude the reenlistment or muster into the Army of any person who has deserted, or may hereafter desert, from the military service of the United States in time of peace, or of any soldier whose service during his last preceding term of enlistment has not been honest and faithful, whenever the reenlistment or muster into the military service of such person or soldier shall; in view of the good conduct of such person or soldier subsequent to such desertion or service, be authorized by the Secretary of War.[1] *Sec. 1998, R. S., as amended by Act of Aug. 22, 1912 (37 Stat. 356).*

1053. *Deserters not entitled to bounty land.*—No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster rolls of his regiment or corps that he deserted or was dishonorably discharged from service. *Sec. 2438, R. S.*

1054. *Forfeiture of pension.*—Any soldier who deserts shall, besides incurring the penalties now attaching to the crime of desertion, forfeit all right to pension which he might otherwise have acquired. *Sec. 6, Act of Apr. 26, 1898 (30 Stat. 365).*

1055. *Aiding, persuading, enticing to desert.*—Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier.

[1] These penalties only take effect upon conviction by court-martial. (Kurtz v. Moffett, 115 U. S., 501.)

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in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than two thousand dollars. *Sec. 42, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1097).*

APPREHENSION OF DESERTERS—REWARDS.

1056. *Who may arrest deserters.*—United States marshals and their deputies, sheriffs and their deputies, constables, and police officers of towns and cities are hereby authorized to apprehend, arrest, and receive the surrender of any deserter from the Army for the purpose of delivering him to any person in the military service authorized to receive him. *Sec. 3, Act of June 16, 1890 (26 Stat. 157).*

1057. *Arrest, etc., of deserters by civil officers.*—It shall be lawful for any civil officer having authority under the laws of the United States or of any State, Territory, or District, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government.[1] *Sec. 6, Act of June 18, 1898 (30 Stat. 484).*

1058. *Payment to civil officers or citizens.*—For the apprehension, securing and delivering of deserters, including escaped military prisoners, and the expenses incident to their pursuit, and no greater sum than $50 for each deserter or escaped military convict shall, in the discretion of the Secretary of War, be paid to any civil officer or civilian for such services and expenses. *Act of Mar. 2, 1913 (37 Stat. 713).*

DECEASED SOLDIERS.

1059. *Settlement of accounts.*—Hereafter, in the settlement of the accounts of deceased officers or enlisted men of the Army, where the amount due the decedent's estate is less than five hundred dollars and no demand is presented by a duly appointed legal representative of the estate, the accounting officers may allow the amount found due to the decedent's widow or legal heirs in the following order of precedence: First, to the widow; second, if decedent left no widow, or the widow be dead at time of settlement, then to the children or their issue, per stirpes; third, if no widow or descendants, then to

[1] See Dig. Op. J. A. G., 402-413, edition 1912.

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the father and mother in equal parts, provided the father has not abandoned the support of his family, in which case to the mother alone; fourth, if either the father or mother be dead then to the one surviving; fifth, if there be no widow, child, father, or mother at the date of settlement, then to the brothers and sisters and children of deceased brothers and sisters, per stirpes: *Provided*, That this Act shall not be so construed as to prevent payment from the amount due the decedent's estate of funeral expenses, provided a claim therefor is presented by the person or persons who actually paid the same before settlement by the accounting officers. *Act of June 30, 1906 (34 Stat. 750)*.

1060. *Same—Navy and Marine Corps.*—Hereafter, in the settlement of the accounts of deceased officers or enlisted men of the Navy and Marine Corps, where the amount due the decedent's estate is less than five hundred dollars and no demand is presented by a duly appointed legal representative of the estate, the accounting officers may allow the amount found due to the decedent's widow or legal heirs in the following order of precedence: First, to the widow; second, if the decedent left no widow, or widow be dead at time of settlement, then to the children or their issue, per stirpes; third, if no widow or descendants, then to the father and mother in equal parts, provided father has not abandoned the support of his family, in which case to the mother alone; fourth, if either the father or mother be dead, then to the one surviving; fifth, if there be no widow, child, father, or mother at the date of settlement, then to the brothers and sisters and children of deceased brothers and sisters, per stirpes: *Provided*, That this Act shall not be so construed as to prevent payment from the amount due the decedent's estate of funeral expenses, provided a claim therefor is presented by the person or persons who actually paid the same before settlement by the accounting officers. *Act of May 27, 1908 (35 Stat. 373)*.

(While this paragraph appears to refer exclusively to the Navy and Marine Corps, it is inserted here because it was enacted under the general heading "Under the War Department" in the sundry civil appropriation act of May 27, 1908.)

1061. *Gratuity.*—Hereafter immediately upon official notification of the death from wounds or disease contracted in line of duty of any officer or enlisted man on the active list of the Army, the Paymaster-General of the Army shall cause to be paid to the widow of such officer or enlisted man, or to any other person previously designated by him, an amount equal to six months' pay at the rate received by such officer or enlisted man at the date of his death, less seventy-five dollars in the case of an officer and thirty-five dollars in the case of an enlisted man. From the amount thus reserved the Quartermaster's Department shall be reimbursed for expenses of interment, and

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the residue, if any, of the amount reserved, shall be paid subsequently to the designated person. The Secretary of War shall establish regulations requiring each officer and enlisted man to designate the proper person to whom this amount shall be paid in case of his death, and said amount shall be paid to that person from funds appropriated for the pay of the Army. (See next paragraph.) *Act of May 11, 1908 (35 Stat. 108).*

1062. *Same.*—The Act approved May eleventh, nineteen hundred and eight, for the support of the army for the fiscal year ending June thirtieth, nineteen hundred and nine, in so far as it relates to the payment of six months' pay to the widow of an officer or enlisted man, and so forth, be amended as follows:

Strike out the words "contracted in the line of duty" and insert in lieu thereof the words, "not the result of his own misconduct." *Act of Mar. 3, 1909 (35 Stat., 735).*

1063. *Expenses of interment, etc.*—For the expenses of interment, or of preparation and transportation to their homes or to such national cemeteries as may be designated by proper authority, in the discretion of the Secretary of War, of the remains of officers, including acting assistant surgeons, and enlisted men of the army active list; for the expenses of interment, or of preparation and transportation to their homes, of the remains of civil employees of the army in the employ of the War Department who die abroad, inclusive of Alaska, or on army transports; for the expenses of removal of remains from abandoned posts to permanent military posts or national cemeteries, including the remains of federal soldiers, sailors, or marines interred in fields or abandoned private and city cemeteries; and in any case where the expenses of burial or shipment of the remains of officers or enlisted men of the army who die on the active list are borne by individuals, where such expenses would have been lawful claims against the Government, reimbursement to such individuals may be made of the amount allowed by the Government for such services, to be paid out of the funds appropriated by this Act, but no reimbursement shall be made under this Act of such expenses incurred prior to the first day of July, nineteen hundred and ten, * * * dollars. *Act of Aug. 24, 1912 (37 Stat. 440).*

(This paragraph will be found in the last few sundry civil appropriation acts. This paragraph has the effect of making one appropriation available for expenses of interment, etc., whereas heretofore the expenses had to be met from different appropriations.)

CITIZENSHIP.

1064. *Aliens honorably discharged from military service.*—Any alien of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular

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or volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.[1] *Sec. 2166, R. S.*

1065. *Aliens honorably discharged from the naval service.*—Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps. *Act of July 26, 1894 (28 Stat. 124).*

1066. *Naturalization of seamen.*—Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of inten-

[1]Aliens, honorably discharged after enlisting in our Army, are not, by such discharge alone, made citizens, but they are thereupon entitled (under a provision of the act of July 17, 1862, now section 2166, Revised Statutes) to be admitted to become citizens without previous declaration of intention, upon merely presenting to the proper court (see sec. 2165, R. S.) a petition for the purpose, accompanied by proof of at least one year's residence within the United States previous to the application, of good moral character, and of the fact of honorable discharge. (Dig. Opin. J. A. G., par. 401, edition 1901.)

Under the act of July 30, 1892, an enlisted man, to be eligible for promotion as commissioned officer, must be a citizen of the United States. And, in order to be promptly naturalized, under section 2166, Revised Statutes, he must first be honorably discharged. So, advised that such alien, to be qualified for examination and appointment under the act, should be discharged and, after naturalization, be reenlisted. (Id., par. 403.)

The mere enlistment and honorable discharge of an alien as a soldier of our Army do not per se constitute him a citizen of the United States. He must still make formal petition to one of the courts, etc., specified in section 2165, Revised Statutes, and present thereupon the evidence required by section 2166. (Id., par. 736.)

A native-born minor is a citizen of the United States under the fourteenth amendment of the Constitution. (Id., par. 737.)

See Dig. Op. J. A. G., pp. 20, 613, 614, 617, 834, edition 1912.

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tion to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen. *Sec. 2174, R. S.*

(This would apply to members of the crew of an Army transport vessel.)

MISCELLANEOUS PROVISIONS.

1067. *Exemption from arrest for debt.*—No enlisted man shall, during his term of service, be arrested on mesne process, or taken or charged in execution for any debt, unless it was contracted before his enlistment, and amounted to twenty dollars when first contracted. *Sec. 1237, R. S.*

1068. *Enlisted men not to be used as servants.*—No officer shall use an enlisted man as a servant in any case whatever. *Sec. 1232, R. S.*

1069. *Employment as stenographers.*—Hereafter enlisted men may be detailed to serve as stenographic reporters for general courts-martial, courts of inquiry, military commissions, and retiring boards, and while so serving shall receive extra pay at the rate of not exceeding five cents for each one hundred words taken in shorthand and transcribed, such extra pay to be met from the annual appropriation for expenses of courts-martial, and so forth. *Act of Aug. 24, 1912 (37 Stat. 575).*

1070. *Remount detachments at remount depots.*—That hereafter from the enlisted force of the Army now provided by law the President may authorize the organization of remount detachments at each of the remount depots, and may authorize the appointment therein of such noncommissioned officers, mechanics, artificers, farriers, horseshoers, and cooks as may be necessary for the administration of such remount depot: *Provided*, That nothing herein shall be so construed as to authorize an increase in the total number of enlisted men of the Army now authorized by law. *Act of Mar. 3, 1911 (36 Stat. 1049).*

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CHAPTER XXVII.

THE TROOPS OF THE LINE.

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CAVALRY.

1071. *Same—Organization of regiment.*—Each regiment of cavalry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteen first lieutenants, and fifteen second lieutenants; two veterinarians, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three squadron sergeants-major, two color-sergeants with rank, pay, and allowances of squadron sergeant-major, one band, and twelve troops organized into three squadrons of four troops each.[1] *Sec. 2, Act of Feb. 2, 1901 (31 Stat. 748).*

[1] This enactment replaces section 1102, Revised Statutes, and section 2, act of March 2, 1899, in part materia. Section 28 of the act of February 2, 1901 (31 Stat. 755), contained the requirement that "vacancies in the grade of field

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1072. *Same—Colored regiments.*—The enlisted men of two regiments of cavalry shall be colored men. *Sec. 1104, R. S.*

1073. *Same—May be dismounted.*—Any portion of the cavalry force may be armed and drilled as infantry, or dismounted cavalry, at the discretion of the President. *Sec. 1105, R. S.*

1074. *Same—Organization of troops.*—Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, six sergeants, six corporals, two cooks, two farriers and blacksmiths, one saddler, one wagoner, two trumpeters, and forty-three privates, the commissioned officers to be assigned from those hereinbefore authorized:[1] *Provided*, That one of the two "blacksmiths and farriers" now authorized by law for each troop of cavalry shall hereafter be designated "farrier," and the other "horseshoer," and that the additional pay of nine dollars per month provided for "one blacksmith and farrier in each troop of cavalry for performing the duty of horseshoer" in the Act of Congress approved May eleventh, nineteen hundred and eight, shall be paid to the soldier designated as "horseshoer." *Sec. 2, Act of Feb. 2, 1901 (31 Stat. 748), as amended by Act of Mar. 3, 1909 (35 Stat., 735).*

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officers and captain created by this act in the cavalry, artillery, and infantry shall be filled by promotion, according to seniority in each branch, respectively. For the method of filling vacancies created by the act of February 2, 1901, in the grades of first and second lieutenants, see paragraph 1102, post.

Of the several cavalry regiments now composing the peace establishment, the first, a regiment of dragoons, was authorized by the act of March 2, 1833 (4 Stat. 652). A second regiment of dragoons was authorized by the act of May 23, 1836 (5 Stat. 32). The second regiment of dragoons was converted into a regiment of riflemen by the act of August 23, 1842 (5 Stat. 512), but was reconverted into a regiment of dragoons by the act of April 4, 1844 (5 Stat. 654). A regiment of mounted riflemen was added to the establishment by the act of May 19, 1846 (9 Stat. 13). Two regiments of cavalry (known as the First and Second) were authorized by the act of March 3, 1855 (10 Stat. 635). A third regiment of cavalry was organized by order of the President on May 4, 1861, confirmed by the act of July 29, 1861 (12 Stat. 279). In accordance with the authority conferred by the act of August 3, 1861, the six mounted regiments of the Army were consolidated into one corps and designated as follows:

The First Regiment of Dragoons, as the First Cavalry.
The Second Regiment of Dragoons, as the Second Cavalry.
The Regiment of Mounted Riflemen, as the Third Cavalry.
The First Regiment of Cavalry, as the Fourth Cavalry.
The Second Regiment of Cavalry, as the Fifth Cavalry.
The Third Regiment of Cavalry, as the Sixth Cavalry.

Four regiments of cavalry, the Seventh, Eighth, Ninth, and Tenth, the Ninth and Tenth composed of colored men, were added to the establishment under the authority conferred by the act of July 28, 1866 (14 Stat. 332); the Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth were added by section 2, act of February 2, 1901 (31 Id., 748).

[1] This enactment replaces section 1103, Revised Statutes, and section 2, act of March 2, 1899 (30 ibid., 977).

Since 1883 companies of cavalry have been designated as troops. (Circulars 8 and 9, A. G. O., of 1883.) By General Orders, Nos. 79 and 120, of 1890, the enlisted men of Troops L and M of each regiment of cavalry were distributed among the other troops. By General Orders, No. 27, of 1898, issued at the outbreak of the war with Spain, the skeletonized troops were reestablished and restored to the status occupied by them prior to the skeletonization in 1890.

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1075. *Same—Increase of corporals and privates.*—The President, in his discretion, may increase the number of corporals in any troop of cavalry to eight, and the number of privates to seventy-six, but the number of enlisted men authorized for the whole Army shall not at any time be exceeded. *Sec. 2, Act of Feb. 2, 1901 (31 Stat. 748).*

1076. *Same—Bands, organization.*—Each cavalry band shall consist of one chief musician; one chief trumpeter; one principal musician; one drum major, who shall have the rank, pay, and allowances of a first sergeant; four sergeants; eight corporals; one cook, and eleven privates.[1] *Sec. 2, Act of Mar. 2, 1899 (30 Stat. 977).*

1077. *Same—Details, regimental staff, etc.*—Of the officers herein provided, the captains and lieutenants not required for duty with the troops shall be available for detail as regimental and squadron staff officers and such other details as may be authorized by law or regulations.[2] *Sec. 2, Act of Feb. 2, 1901 (31 Stat. 748).*

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[1] Section 2 of the act of February 2, 1901 (31 Stat. 748), provides that each cavalry band shall be organized as now provided by law.

As to monthly pay of bands, and restrictions upon their furnishing music outside the limits of military posts in competition with local civilian musicians see paragraph 701, ante.

[2] The act of August 24, 1912 (37 Stat. 571), provides that hereafter in time of peace whenever any officer holding a permanent commission in the line of the Army with rank below that of major shall not have been actually present for duty for at least two of the last preceding six years with a troop, battery, or company of that branch of the Army in which he shall hold said commission, such officer shall not be detached nor permitted to remain detached from such troop, battery, or company for duty of any kind; and all pay and allowances shall be forfeited by any superior for any period during which, by his order, or his permission, or by reason of his failure or neglect to issue or cause to be issued the proper order or instructions at the proper time, any officer shall be detached or permitted to remain detached in violation of any of the terms of this proviso, etc. By joint resolution of August 24, 1912 (37 Stat. 645), the operation of this proviso was postponed until on and after December 15, 1912.

For composition, duties, etc., of the regimental, battalion, and squadron staff see paragraphs 248–255, Army Regulations, 1913.

That hereafter, in determining the eligibility, under the provisions of the act of Congress approved August 24, 1912, of troop, battery, or company officers for detail as officers of the various staff corps and departments of the Army, except the General Staff Corps, service actually performed by any such officer with troops prior to December 15, 1912, as a regimental, battalion, or squadron staff officer, shall be deemed to have been duty with a battery, company, or troop: *Provided further*, That regimental, battalion, and squadron quartermasters and commissaries shall hereafter be required to perform the duties of officers of the Quartermaster Corps, including the receipting for any money or property pertaining to said corps when no officer of the Quartermaster Corps is present for such duties, and nothing contained in the Army appropriation act approved August 24, 1912, shall hereafter be held or construed so as to prevent competent authority from requiring any officers of the Army to act temporarily as quartermasters wherever there shall be no officers of the Quartermaster Corps and no regimental, battalion, or squadron quartermasters or commissaries present for such duty. (Act of Mar. 2, 1913 (37 Stat. 706).)

That after September 1, 1914, in time of peace, whenever any officer holding a permanent commission in the line of the Army, with rank of colonel, lieutenant colonel, or major, shall not have been actually present for duty for at least two years of the last preceding six years with a command composed of not less than two troops, batteries, or companies of that branch of the Army in which he shall hold said commission, such officer shall not be detached nor permitted to remain detached from such command for duty of any kind except as here-

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1078. *Same—Veterinarians, pay and allowances.*—The grade of veterinarian of the second class in cavalry regiments, United States Army, is hereby abolished, and hereafter the two veterinarians authorized for each cavalry regiment and the veterinarians authorized for the Artillery Corps shall receive the pay and allowances of second lieutenants, mounted.[1] *Sec. 20, Act of Feb. 2, 1901 (31 Stat. 753); Act of Mar. 2, 1901 (id., 901).*

1079. *Same—Retirement of.*—Hereafter so much of section twenty, of the Act approved February second, nineteen hundred and one, as provides that veterinarians shall receive the pay and allowances of second lieutenants, mounted, shall be interpreted to authorize their retirement under the laws governing the retirement of second lieutenants. *Act of Mar. 3, 1911 (36 Stat. 1042).*

1080. *Same—Remount detachments.*—That hereafter from the enlisted force of the Army now provided by law the President may authorize the organization of remount detachments at each of the remount depots, and may authorize the appointment therein of such noncommissioned officers, mechanics, artificers, farriers, horseshoers, and cooks as may be necessary for the administration of such re-

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inafter specifically provided; and all pay and allowances shall be forfeited by any superior for any period during which, by his order or his permission, or by reason of his failure or neglect to issue or cause to be issued the proper order or instructions at the proper time, any officer shall be detached or permitted to remain detached in violation of any of the terms of this act; but nothing in this act shall be held to apply in the case of any officer for such period as shall be actually necessary for him, after having been relieved from detached service, to join the organization or command to which he shall belong in that branch in which he shall hold a permanent commission; nor shall anything in this act be held to apply to the detachment or detail of officers for duty in connection with the construction of the Panama Canal until after such canal shall have been formally opened, or in connection with the Alaska Road Commission or the Alaska Railroad or the Bureau of Insular Affairs; and nothing in this act shall prevent the redetail of officers above the grade of major to fill vacancies in the various staff corps and departments as provided for by section 26 of the act of Congress approved February 2, 1901: *Provided further*, That whenever the service record of any field officer is to be ascertained for the purposes of this act, all duty actually performed by him, during the last preceding six years, in a grade below that of major, in connection with any statutory organization of that branch of the Army in which he shall hold a permanent commission, or as a staff officer of any coast-defense or coast-artillery district, shall be credited to him as actual presence for duty with a command composed as hereinbefore prescribed: *And provided further*, That temporary duty of any kind hereafter performed with United States troops in the field for a period or periods the aggregate of which shall not exceed 60 days in any one calendar year, and duty hereafter performed in command of United States Army mine planter by an officer assigned to a company from which this detachment is drawn, and duty hereafter performed in command of a machine-gun platoon or a machine-gun unit, by any officer who, before assignment to such duty, shall have been regularly assigned to, and shall have entered upon duty with, an organization or a command the detachment of certain officers from which is prohibited by the act of Congress approved August 24, 1912, or by this act, shall, for the purposes of said acts, hereafter be counted as actual presence for duty with such organization or command. (Act of Apr. 27, 1914, Pub. No. 91, 38 Stat. —.)

[1] This enactment replaces section 1102, Revised Statutes, and section 2, act of March 2, 1899. (30 Stat. 977,)

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mount depot: *Provided*, That nothing herein shall be so construed as to authorize an increase in the total number of enlisted men of the Army now authorized by law. *Act of Mar. 3, 1911 (36 Stat. 1049).*

THE ARTILLERY CORPS.[1]

1081. *Same—Organization.*—The regimental organization of the artillery arm of the United States Army is hereby discontinued, and that arm is constituted and designated as the artillery corps. It shall be organized as hereinafter specified and shall belong to the line of the Army. *Sec. 3, act of Feb. 2, 1901 (31 Stat. 748).*

1082. *Same—Shall comprise two branches.*—The artillery corps shall comprise two branches—the coast artillery and the field artillery. The coast artillery is defined as that portion charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine and torpedo defenses; and the field artillery as that portion accompanying an army in the field, and including field and light artillery proper, horse artillery, siege artillery, mountain artillery, and also machine-gun batteries: *Provided*, That this shall not be construed to limit the authority of the Secretary of War to order coast artillery to any duty which the public service demands, or to prevent the use of machine or other field guns by any other arm of the service under the direction of the Secretary of War.[2] *Sec. 4, Act of Feb. 2, 1901 (31 Stat. 749).*

1083. *Same.*—The artillery of the United States Army shall consist of the Chief of Artillery, the coast artillery, and the field artillery. The coast artillery and the field artillery shall be organized as hereinafter specified, and the artillery shall belong to the line of the Army: *Provided*, That on and after July first, nineteen hundred and eight, the Chief of Artillery shall cease to exercise supervision

[1] At the general reduction of the Army, effected in pursuance of the act of March 2, 1821 (3 Stat. 615), the artillery was consolidated into four regiments of nine companies each, one of which, in each regiment, was to be designated and equipped as light artillery. The Ordnance Department was merged in the artillery, a supernumerary captain, for ordnance duty, was added to each regiment, and the President was authorized "to select from the regiments of artillery such officers as may be necessary to perform ordnance duties who, while so detached, shall be subject only to the orders of the War Department." The Ordnance Department was separated from the artillery by the act of May 25, 1832 (4 Stat. 605). One company was added to each regiment by the act of July 5, 1838 (5 Stat. 256), and two companies by section 18 of the act of March 3, 1847 (9 Stat. 184), making twelve companies in all. The act of March 3, 1847, authorized the President to designate an additional company in each regiment to be armed and equipped as light artillery. The fifth regiment was added, as a regiment of light artillery, by order of the President, on May 5, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. 279). The sixth and seventh regiments were added, and the organization of the first five regiments modified, by the act of March 8, 1898 (30 Stat. 261). This section replaces sections 1099–1101, Revised Statutes, the act of March 8, 1898 (30 id., 261), and section 3, act of March 2, 1899 (id., 977).

[2] See section 1, act of January 25, 1907 (34 Stat. 861), paragraph 1083, post.

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over the field artillery and shall thereafter be designated as the Chief of Coast Artillery.[1] *Sec. 1, Act of Jan. 25, 1907 (34 Stat. 861).*

1084. *Same—Separation of branches; officers to temporarily form one list, etc.*—On and after the approval of this Act the coast artillery and the field artillery shall be permanently separated, the separation to be effected as follows:

All officers in the present Artillery Corps shall remain on one list as regards promotion until sufficient promotions shall have been made, as far as the present number of officers permit, to provide in each grade, together with the officers remaining therein, the total number of officers of the grade provided for in this Act for the coast and field artillery combined. After such promotion they shall, in each grade, be assigned by the President to the coast artillery or to the field artillery, according to special aptitude and qualifications and agreeably to individual preference, so far as may be practicable and for the good of the service, such assignments to be permanent; and all officers promoted or appointed in the artillery thereafter shall be commissioned as officers of the coast artillery or the field artillery, as the case may be, and shall be promoted by seniority in their own branch, subject to the provisions of the laws governing promotion in the Army at large. *Sec. 9, id., 863.*

1085. *Same—Vacancies caused by separation to be filled according to seniority.*—All vacancies created or caused by this Act which can be filled by promotion of officers now in the Artillery Corps shall be filled by promotion according to seniority, subject to examination as now prescribed by law. Of the vacancies created or caused by this Act which can not be filled by promotion of officers now in the Artillery Corps, one-fifth in each branch shall be filled in each fiscal year until the total number of officers herein provided for shall have been attained. The vacancies remaining in the grade of second lieutenant shall be filled by appointment in the following order: First, of graduates of the United States Military Academy; second, of enlisted men whose fitness for advancement shall have been determined by competitive examination; third, of candidates from civil life; and all such appointments shall be made in accordance with the provisions of existing law. *Sec. 10, id.*

1086. *Coast Artillery to constitute corps.*—The coast artillery shall constitute a corps, and shall consist of one Chief of Coast Artillery with the rank, pay, and allowances of a brigadier-general, as provided in section one of this Act; fourteen colonels; fourteen lieutenant-colonels; forty-two majors; two hundred and ten captains; two hundred and ten first lieutenants, and two hundred and ten second

[1] See section 4, act of February 2, 1901 (31 Stat. 749), paragraph 1082, ante.

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lieutenants; and the captains and lieutenants provided for in this section not required for duty with companies shall be available for duty as staff officers of the various coast artillery commands and for such other details as may be authorized by law and regulations;[1] twenty-one sergeants-major with the rank, pay, and allowances of regimental sergeants-major of infantry; twenty-six master electricians; sixty engineers; seventy-four electrician-sergeants, first class; seventy-four electrician-sergeants, second class; forty-two sergeants-major with the rank, pay, and allowances of battalion sergeants-major of infantry; forty-two master gunners; sixty firemen; one hundred and seventy companies, and fourteen bands, organized as now provided for by law for artillery corps bands. *Sec. 5, id., 861.*

1087. *Same—Composition and duties.*—The coast artillery is the artillery charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine mine and torpedo defenses. *Sec. 3, id.*

1088. *Same—Company organization; total strength.*—Each company of coast artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, two cooks, two mechanics, two musicians, and such number of sergeants, corporals, and privates as may be fixed by the President in accordance with the requirements of the service to which it may be assigned: *Provided*, That the total number of sergeants and corporals in the coast artillery, so fixed, shall not exceed one thousand three hundred and sixty and two thousand and forty, respectively, and that the total enlisted strength of the coast artillery, as provided under this Act, shall not exceed nineteen thousand one hundred and forty-seven, exclusive of master electricians, electrician-sergeants, first class, and electrician-sergeants, second class. *Sec. 6, id., 862.*

1089. *Same—Bands.*—Fourteen bands, organized as now provided for by law for artillery corps bands.[2] *Sec. 5, id.*

1090. *Field Artillery, organization.*—The field artillery shall consist of six regiments, each organized as follows: One colonel, one lieutenant-colonel, two majors, eleven captains, thirteen first lieutenants, and thirteen second lieutenants; two veterinarians, one ser-

[1] As to the law governing length of details. (Manchu legislation.) See note, paragraph 1077, ante.

[2] By section 3, act of March 2, 1899 (30 Stat. 978), it is provided that each artillery band shall consist of one chief musician, one chief trumpeter, one principal musician, one drum-major, who shall have the rank, pay, and allowances of a first sergeant, four sergeants, eight corporals, one cook, and eleven privates.

The act of February 2, 1901 (31 Stat. 749), in its provision for the organization of the Artillery Corps, authorized ten bands, organized as now authorized by law for artillery regiments.

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geant-major, one quartermaster-sergeant, one commissary-sergeant, two battalion sergeants-major, two battalion quartermaster-sergeants, two color-sergeants, one band, and six batteries organized into two battalions of three batteries each. Of the officers herein provided the captains and lieutenants not required for duty with batteries shall be available for detail as regimental and battalion staff officers, and for such other details as may be authorized by law and regulations.[1] Battalion adjutants shall be detailed from the captains, and battalion quartermasters and commissaries from lieutenants. Each field artillery band shall be organized as provided by law for cavalry bands: *Provided*, That the President in his discretion may increase by nine mounted orderlies the regimental strength herein authorized. *Sec. 7, id.*

1091. *Same—Battery, organization; maximum enlisted strength not to be increased.*—Each battery of field artillery shall consist of one captain, two first lieutenants, two second lieutenants, one first sergeant, one quartermaster-sergeant, one stable sergeant, one chief mechanic, six sergeants, twelve corporals, four mechanics, three cooks, two musicians, and one hundred and two privates, the commissioned officers to be assigned from among those hereinbefore authorized for the regiment: *Provided*, That the President in his discretion may increase the number of sergeants in any battery of field artillery to eight, the number of corporals to sixteen, the number of mechanics to seven, the number of musicians to three, and the number of privates to one hundred and forty-nine: *Provided further*, That nothing contained in this Act shall increase the total number of enlisted men in the line of the Army, together with the native scouts, as authorized by section thirty-six of the Act of Congress approved February second, nineteen hundred and one, entitled "An Act to increase the efficiency of the permanent military establishment of the United States." *Sec. 8, id.*

1092. *Same—Regimental and battalion noncommissioned staff officers, etc.*—The regimental and battalion noncommissioned staff officers herein authorized for regiments of field artillery shall have the pay and allowances of corresponding grades in the cavalry; the battalion quartermaster-sergeant shall have the pay and allowances of sergeant-major, junior grade, of the Artillery Corps; the chief mechanic the pay and allowances of sergeant, and the mechanics of field artillery the pay and allowances of artificers of field artillery; engineer, sixty-five dollars a month and allowances of ordnance-sergeant; electrician-sergeant, first class, forty-five dollars a month and allowances of ordnance-sergeant; electrician-sergeant, second class,

[1] As to the law governing length of details (Manchu legislation), see note, paragraph 1077, ante.

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thirty-five dollars a month and allowances of ordnance-sergeant; master gunner, the pay and allowances of ordnance-sergeant; fireman, thirty dollars a month and allowances of ordnance-sergeant; and that the rates of pay of all other enlisted men of the coast and the field artillery shall be as now provided by law: *Provided*, That casemate electricians, observers, first class, and plotters shall receive nine dollars a month in addition to their pay; that chief planters, chief loaders, observers, second class, gun commanders, and gun pointers shall receive seven dollars a month in addition to their pay, and that first-class gunners shall receive two dollars a month and second-class gunners one dollar a month in addition to their pay: *Provided further*, That the number of casemate electricians shall not exceed forty-four; that the number of observers, first class, shall not exceed one hundred and seventy; that the number of plotters shall not exceed one hundred and seventy; that the number of chief planters shall not exceed forty-four; that the number of chief loaders shall not exceed forty-four; that the number of observers, second class, shall not exceed one hundred and seventy; that the number of gun commanders shall not exceed three hundred and seventy-eight, and that the number of gun pointers shall not exceed three hundred and seventy-eight: *And provided further*, That no enlisted man shall receive under this section more than one addition to his pay.[1] *Sec. 11, id., 863.*

1093. *Same—Composition and duties.*—The field artillery is the artillery which accompanies an army in the field, and includes light artillery, horse artillery, siege artillery, and mountain artillery. *Sec. 4, id., 861.*

1094. *Same—Bands.*—Each field artillery band shall be organized as provided by law for cavalry bands:[2] *Provided*, That the President in his discretion may increase by nine mounted orderlies the regimental strength herein authorized. *Sec. 7, id., 862.*

INFANTRY.

1095. *Same—Organization of regiment.*—Each regiment of infantry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteen first lieutenants, and fifteen second lieutenants, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three battalion sergeants-major, two color-sergeants, with rank, pay, and allowances of battalion sergeants-major, one

[1] As to pay, however, see Chapter XVIII, the Quartermaster Corps, pay of enlisted men, paragraphs 695 and 697–8, ante.

[2] See paragraph 1076, ante, which provides that each cavalry band shall consist of one chief musician, one chief trumpeter, one principal musician, one drum major, who shall have the rank, pay, and allowances of a first sergeant, four sergeants, eight corporals, one cook, and eleven privates.

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band, and twelve companies, organized into three battalions of four companies each.[1] *Sec. 10, Act of Feb. 2, 1901 (31. Stat. 750).*

1096. *Same—Colored regiments.*—The enlisted men of two regiments of infantry shall be colored men. *Sec. 1108, R. S.*

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[1] This enactment replaces section 1106, Revised Statutes, and section 4, act of March 2, 1899 (30 Stat. 977), in pari materia. Section 28 of the act of February 2, 1901 (31 Stat. 755), contained the requirement that "vacancies in the grade of field officers and captain created by this act in the cavalry, artillery, and infantry shall be filled by promotion according to seniority in each branch respectively." For method of filling vacancies created by that enactment in the grades of first and second lieutenant, see paragraphs 1102 and 1103, post.

The First Regiment of infantry was authorized by the act of April 30, 1790 (1 Stat. 119), the Second by the act of March 3, 1791 (id. 222), the Third and Fourth by the act of May 30, 1796 (id. 483), the Fifth, Sixth, and Seventh regiments by the act of June 26, 1812 (2 Stat. 764), and the number of regiments of infantry was fixed at seven by the act to reduce and fix the military establishment, approved March 2, 1821. The Eighth Regiment was added by the act of July 5, 1838, and the President was authorized, "whenever he may deem it expedient, to cause not exceeding two of the regiments of infantry to be armed and equipped as regiments of riflemen, and one other of the regiments of infantry to be armed and equipped and to serve as a regiment of light infantry." The Ninth and Tenth regiments were authorized by the act of March 3, 1855 (10 Stat. 701). The Eleventh to the Nineteenth Regiments, inclusive, were organized by order of the President on May 4, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. 279). Twenty-five regiments, from the Twentieth to the Forty-fifth, inclusive, were authorized by the act of July 28, 1866, of which four, from the Thirty-eighth to the Forty-first, inclusive, were to be composed of colored men, and four, from the Forty-second to the Forty-fifth, inclusive, were to be composed of men who had been wounded in line of duty and were to constitute a Veteran Reserve Corps. At the reduction effected in pursuance of section 2 of the act of March 3, 1869 (15 Stat. 318), the number of infantry regiments was reduced to twenty-five. In effecting the consolidation required by the act above cited, the designations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Thirteenth, Twentieth, and Twenty-third regiments were not changed; the Eleventh Regiment was formed, by consolidation, from the Twenty-fourth and Twenty-ninth; the Fourteenth from the Fourteenth and Forty-fifth; the Fifteenth from the Fifteenth and Thirty-fifth; the Sixteenth from the Eleventh and Thirty-fourth; the Seventeenth from the Seventeenth and Forty-fourth; the Eighteenth from the Eighteenth and Twenty-fifth; the Nineteeth from the Nineteeth and Twenty-eighth; the Twenty-first from the Twenty-first and Thirty-second; the Twenty-second from the Twenty-second and Thirty-first; the Twenty-fourth from the Thirty-eighth and Forty-first; the Twenty-fifth from the Thirty-ninth and Fortieth. Five new regiments, from the Twenty-sixth to the Thirtieth, inclusive, were added by section 10, act of February 2, 1901 (31 Stat. 750).

The regiments organized prior to the 4th of May, 1861, were composed of ten companies each; those organized by Executive order of that date were each composed of three battalions of eight companies each. The organization prescribed by the act of July 28, 1866, fixed the organization of an infantry regiment at 10 companies, of a cavalry regiment at twelve companies, and a regiment of artillery at the same number.

By the act of April 26, 1898 (30 Stat. 364), a battalion organization was adopted for the infantry, each regiment being composed of two battalions of four companies each, and of two skeleton, or unmanned companies. Upon a declaration of war by Congress, the President was authorized to organize a third battalion, to be composed of the two skeleton companies and two additional companies. By section 4 of the act of March 2, 1899 (30 Stat. 977), the regimental organization of infantry was made to consist of three battalions of four companies each; by section 15 of the same enactment, however, the regimental organization, as it existed on April 1, 1898, was required to be restored by the discharge of supernumerary officers and enlisted men. The artillery regiments were exempted from this reduction.

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1097. *Same—Company organization.*—Each infantry company shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, six corporals, two cooks, two musicians, one artificer, and forty-eight privates, the commissioned officers to be assigned from those hereinbefore authorized.[1] *Sec. 10, Act of Feb. 2, 1901 (31 Stat. 750).*

1098. *Same—Increase as to noncommissioned officers and privates.*—The President, in his discretion, may increase the number of sergeants in any company of infantry to six, the number of corporals to ten, and the number of privates to one hundred and twenty-seven, but the total number of enlisted men authorized for the whole Army shall not at any time be exceeded. *Id.*

1099. *Same—Bands, organization of.*—Each infantry band shall consist of one chief musician, one principal musician, one drum-major, who shall have the rank, pay, and allowances of a first sergeant, four sergeants, eight corporals, one cook, and twelve privates.[2] *Sec. 4, Act of Mar. 2, 1899 (30 Stat. 978).*

1100. *Same—Details, regimental staff, etc.*—Of the officers herein provided, the captains and lieutenants not required for duty with the companies shall be available for detail as regimental and battalion staff officers and such other details as may be authorized by law or regulation.[3] *Sec. 10, Act of Feb. 2, 1901 (31 Stat. 750).*

1101. *Vacancies, how filled.*—Vacancies in the grade of field officers and captain created by this act, in the cavalry, artillery, and infantry shall be filled by promotion according to seniority in each branch respectively. *Sec. 28, id., 755.*

1102. *Same—After promotions.*—Vacancies existing after the promotions have been made shall be provided for as follows: A sufficient number shall be reserved in the grade of second lieutenant for the next graduating class at the United States Military Academy.

Persons not over forty years of age who shall have, at any time, served as volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, may be ordered before boards of officers for such examination as may be prescribed by the Secretary of War, and those who establish their fitness before these examining boards may be appointed to the grades of first or second lieutenant in the Regular Army, taking rank in the respective grades according to seniority as determined by length of prior commissioned service; but no person appointed under the provisions of this section shall be placed

[1] See note to paragraph 1095, ante.

[2] Section 10, act of February 2, 1901 (31 Stat. 750), contained the requirement that "each infantry band shall be organized as now required by law." (See note, par. 1095, ante.)

[3] As to the law governing length of details (Manchu legislation), see note to paragraph 1077, ante.

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above another in the same grade with longer commissioned service, and nothing herein contained shall change the relative rank of officers heretofore commissioned in the Regular Army. *Id.*

1103. *Same—Appointment of enlisted men.*—Enlisted men of the Regular Army or volunteers may be appointed second lieutenants in the Regular Army to vacancies created by this act, provided that they shall have served one year under the same conditions now authorized by law for enlisted men of the Regular Army. *Id., 756.*

1104. *Prison guard—Organization of.*—Hereafter recruit and prison companies shall have noncommissioned officers, musicians, artificers and cooks of the numbers and grades allowed by law for companies of infantry. *Act of Mar. 2, 1907 (34 Stat. 1160).*

MAXIMUM STRENGTH.

1105. The President is authorized to maintain the enlisted force of the several organizations of the Army at their maximum strength as fixed by this act during the present exigencies of the service, or until such time as Congress may hereafter otherwise direct.[1] *Sec. 30, Act of Feb. 2, 1901 (31 Stat. 756).*

[1] For the maximum strength referred to in this section, see, as to the cavalry troop, section 2, act of February, 1901 (31 Stat. 748), paragraph 1075, ante; as to the artillery arm, see section 6, ibid., paragraphs 1088–1091, ante; as to the infantry company, see section 10, ibid., paragraphs 1097–1098, ante; as to the engineer company, see section 11, ibid., paragraph 796, ante; for a similar authority to increase the strength of the several organizations in time of war, see the act of April 26, 1898 (30 Stat. 364). Section 36, act of February 2, 1901 (31 Stat. 757), contains the requirement that the "total of the enlisted men of the line of the Army, together with the native force therein authorized, shall not exceed, at any time, one hundred thousand men."

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CHAPTER XXVIII.

THE UNITED STATES MILITARY ACADEMY—THE ARMY WAR COLLEGE—THE SERVICE SCHOOLS.

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THE MILITARY ACADEMY.[1]

1106. *Officers, Professors, and Instructors.*—The United States Military Academy at West Point, in the State of New York,[1] shall be constituted as follows: There shall be one superintendent; one commandant of cadets; one senior instructor in the tactics of artillery; one senior instructor in the tactics of cavalry; one senior instructor in the tactics of infantry; one professor and one assistant professor of civil and military engineering;[2] one professor and one assistant professor of natural and experimental philosophy;[3] one professor and one assistant professor of mathematics;[4] one professor and one assistant professor of chemistry, mineralogy, and geology;[5] one professor and one assistant professor of drawings;[6] one pro-

[1] The Military Academy was established in pursuance of authority conferred by the act of March 16, 1802 (2 Stat. 137), which contained a requirement authorizing the President to establish a corps of engineers: "The said corps, when so organized, shall be stationed at West Point, in the State of New York, and shall constitute a military academy." Sections 26 and 27, act of March 16, 1802 (2 Stat. 137). The post of West Point ceased to be an engineer station and the control of the Military Academy was transferred from the Chief of Engineers to such officer or officers as the Secretary of War may assign to that duty by the act of July 13, 1866 (14 Stat. 92).

[2] The office of professor of civil and military engineering was established by section 2 of the act of April 29, 1802 (2 Stat. 720).

[3] The office of professor of natural and experimental philosophy was established by section 2 of the act of April 29, 1802 (2 Stat. 702).

[4] The office of professor of mathematics was established by section 2 of the act of April 29, 1802 (2 Stat. 702).

[5] The office of professor of chemistry, mineralogy, and geology was established by section 19 of the act of July 5, 1838 (5 Stat. 259).

[6] The office of teacher of drawing, first created by Executive order, received statutory recognition in section 2 of the act of April 29, 1812 (2 Stat. 720). The office of professor of drawing was established by section 3 of the act of August 8, 1846 (9 Stat. 161).

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fessor of modern languages;[1] one assistant professor of the French language; one assistant professor of the Spanish language;[2] one assistant professor of law; one adjutant;[3] one master of the sword;[4] and one teacher of music. *Sec. 1309, R. S.*

1107. *Supervision of the Academy.*—The supervision and charge of the Academy shall be in the War Department, under such officer or officers as the Secretary of War may assign to that duty.[5] *Sec. 1331, R. S.*

1108. *Appointment of Officers and Professors.*—The superintendent, the commandant of cadets, and the professors shall be appointed by the President. The assistant professors, acting assistant professors, and the adjutant shall be officers of the Army, detailed and assigned to such duties by the Secretary of War, or cadets assigned by the superintendent, under the direction of the Secretary of War. *Sec. 1313, R. S.*

1109. *Selection of Officers.*—The superintendent and commandant of cadets may be selected, and all other officers on duty at the Academy may be detailed, from any arm of the service. *Sec. 1314, R. S.*

1110. *Rank of Superintendent and Commandant.*—The superintendent and the commandant of cadets, while serving as such, shall

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[1] The office of teacher of French, first established by Executive regulation, received statutory recognition in section 2 of the act of April 29, 1802 (2 Stat. 702). The office of professor of French was established by section 3 of the act of August 8, 1846 (9 Stat. 161). The act of June 20, 1879 (21 Stat. 34), contained the requirement that "when a vacancy occurs in the office of professor of the French language or in the office of professor of the Spanish language in the Military Academy, both these offices shall cease, and the remaining one of the two professors shall be professor of modern languages; and thereafter there shall be in the Military Academy one, and only one, professor of modern languages." On June 30, 1882, a vacancy having occurred in the office of professor of Spanish, the statute became operative and the offices of professor of French and professor of Spanish were merged, by operation of law, in the office of professor of modern languages. The office of professor of Spanish, created by section 2 of the act of February 15, 1857 (11 Stat. 161), ceased to exist, by operation of law, on June 30, 1882, having been merged in the office of professor of modern languages in conformity to section 4 of the act of June 20, 1879 (21 Stat. 34).

For notes in respect to the establishment of the offices of instructor of ordnance and gunnery and practical military engineering, see notes 1 and 2 on page 411, post.

[2] The offices of assistant professor of civil and military engineering, natural and experimental philosophy, and mathematics were established by section 2 of the act of April 29, 1812 (2 Stat. 720); that of chemistry, mineralogy, and geology by section 19 of the act of July 5, 1838 (5 Stat. 259); those of French and drawing by section 2 of the act of August 6, 1852 (10 Stat. 29; that of Spanish by section 3 of the act of February 28, 1867 (14 Stat. 416), and that of law by the act of January 5, 1895 (28 Stat. 630).

[3] For the status of this office see paragraph 1135, post.

[4] For the status of this office see paragraphs 1131 and 1132, post.

[5] The Military Academy is exempted from the control and supervision of department commanders by the terms of paragraph 191, Army Regulations of 1913, except as to the administration of military justice; and the superintendent has power to convene general courts-martial for the trial of enlisted men. (Act of Mar. 2, 1913, 37 Stat. 722.)

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have, respectively, the local rank of colonel and lieutenant-colonel of engineers.[1] *Sec. 1310, R. S.*

1111. *Superintendent in Command of Academy and Post.*—The superintendent, and, in his absence, the next in rank, shall have the immediate government and military command of the Academy, and shall be commandant of the military post of West Point.[2] *Sec. 1311, R. S.*

1112. *Commandant in command of battalion of cadets.*—The commandant of the cadets shall have the immediate command of the battalion of cadets, and shall be instructor in the tactics of artillery, cavalry, and infantry. *Sec. 1312, R. S.*

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[1] The office of superintendent was created by section 28 of the act of March 16, 1802 (2 Stat. 137), which contained the requirement that "the principal engineer and, in his absence, the next in rank, shall have the superintendence of the Military Academy under the direction of the President of the United States." So much of the act of March 16, 1802, as restricted the appointment to this office to the Corps of Engineers was replaced by section 6 of the act of July 16, 1866 (14 Stat. 92), which vested the supervision of the Academy in the War Department, under such officer or officers as the Secretary of War may assign to that duty. By the act of January 12, 1858 (11 Stat. 333), the local rank of colonel of engineers was conferred upon the superintendent.

The act of June 20, 1840 (5 Stat. 398), contained the requirement that the commander of the corps of cadets should be either the instructor of infantry tactics, of cavalry or artillery tactics, or of practical engineering; and his pay and emoluments were in no case to be less than those allowed by law to the professor of mathematics. By the act of June 12, 1858 (11 id., 333), the pay of this officer was fixed at that of a lieutenant-colonel.

[2] The post of West Point is one of the military posts of the United States, and the appropriation for the construction of buildings at military posts is applicable to the erection of such quarters as are for the use of the military post at that place and independent of the Military Academy located there. (5 Comp. Dec., 812; 3 Dig. Dec. Sec. Comp., 216.)

Expenditures for the support of the Military Academy must be limited to the amounts appropriated in the acts for the support of the Academy, unless a contrary purpose on the part of Congress clearly appears in its legislation. (Id., 216.)

Residents and visitors at the Academy.—No person can be entitled, as a matter of right, to enter within the limits of this post unless he be authorized to do so by the laws of the United States, or by some officer having authority under the law to grant permission to enter such limits. The Superintendent of the Academy, as commandant of this post, has a general authority to prevent any person in civil life residing permanently or temporarily at the post, or occasionally resorting to the post, from interrupting its discipline, or obstructing in any way the performance of the duties assigned by law to the officers and cadets. In the exercise of a sound discretion, the commandant of the post may therefore order from it any person not attached to it by law whose presence is, in his judgment, injurious to the interests of the Academy. And in case any person so ordered shall refuse to depart, after reasonable notice and within a reasonable time, having regard to the circumstances of the case, I think the Superintendent may lawfully remove him by force. (III Opin. Att. Gen., 268–273.) When, however, the United States have leased a dwelling house within the post belonging to them to an individual, they have no greater right than an individual would have in respect to the ejectment of the lessee. (Id.)

No person has the right to enter the limits of the post of West Point, not even to visit the post-office there, unless specially authorized by the laws of the United States or by some officer having authority to grant permission. (Id.)

The Superintendent of the Military Academy is not in general authorized to arrest and confine in the guardhouse a civilian for a mere breach of the police regulations of the post or Academy. His proper remedy is to have the offender removed as soon as practicable, and without unnecessary force, from the reservation. (Dig. Opin. J. A. G., p. 267, V. A. 3d (1).)

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1113. *Superintendent and commandant, pay and allowances.*—The superintendent of the Military Academy shall have the pay of a colonel, and the commandant of cadets shall have the pay of a lieutenant-colonel. *Sec. 1334, R. S.*

1114. *Command of academic staff.*—The academic staff, as such, shall not be entitled to any command in the Army separate from the Academy. *Sec. 1314, R. S.*

1115. *Leave of absence of superintendent.*—Hereafter the Secretary of War may grant the superintendent of the academy leave of absence without deduction from pay or allowances for the same period that the superintendent may grant leave of absence to other officers of the academy under the provisions of section thirteen hundred and thirty of the Revised Statutes. *Act of Aug. 9, 1912 (37 Stat. 263).*

1116. *Professor of law—Assignment.*—The Secretary of War may assign one of the judge-advocates of the Army to be professor of law. *Act of June 6, 1874 (18 Stat. 60). Provided*, That the Secretary of War may, in his discretion, assign any officer of the Army as professor of law.[1] *Act of June 1, 1880 (21 Stat. 153).*

1117. *Associate professor of mathematics.*—There shall be appointed at the Military Academy from the Army, in addition to the professors authorized by the existing laws, an associate professor of mathematics, who shall receive the pay and allowances of a captain mounted, and when his service as associate professor of mathematics at the Academy exceeds ten years, he shall receive the pay and allowances of major; and hereafter there shall be allowed and paid to the said associate professor of mathematics ten per centum of his current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said associate professor of mathematics is hereby placed upon the same footing as regards restrictions upon pay and retirement from active service as officers of the Army. *Act of Mar. 1, 1893 (27 Stat. 515).*

1118. *Associate professor of modern languages.*—For pay of one associate professor of modern languages in addition to pay as captain, five hundred dollars: *Provided*, That the Secretary of War shall assign an officer of the Army to the Military Academy as associate professor of modern languages, and that such officer, while so serving, shall receive the pay and allowances of a major. *Act of Mar. 3, 1903 (32 Stat. 1012).*

1119. *Professor of ordnance and gunnery.*—For pay of one professor of ordnance and science of gunnery (lieutenant-colonel), in addition to pay as major: *Provided*, That the position shall be filled

[1] The acts of June 27, 1881 (21 Stat. 319), and June 30, 1882 (22 Stat. 125), contain a similar provision.

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by the detail of an officer of the Army, who, while so serving, shall have the title and status of other professors, * * * five hundred dollars.[1] *Act of Mar. 2, 1907 (34 Stat. 1063).*

1120. *Assistant professors of ordnance and gunnery.*—For pay of nine assistant professors (captains), two of whom are hereby authorized hereafter for the department of English and history and the department of ordnance and gunnery, one for each department, respectively, in addition to pay as first lieutenant, three thousand six hundred dollars. *Act of Mar. 3, 1911 (36 Stat. 1016).*

1121. *Professor of English and history.*—The head of the department of English and history shall hereafter have the same status as the professors at the head of the other departments of instruction at the Military Academy, and the President of the United States is hereby authorized, by and with the consent of the Senate, to appoint a civilian in the department of English and history, United States Military Academy, a professor at the Military Academy, with the rank, pay, allowances, title, and status of the other professors: *Provided further*, That the provisions of law relating to retirement for disability in line of duty shall not apply in the case of this professor until after he shall have served fifteen years at the Military Academy. *Act of Apr. 19, 1910 (36 Stat. 312).*

1122. *Assistant professors of English and history.*—Hereafter two assistant professors shall be authorized in the department of English and history, one for English and one for history. *Act of Aug. 9, 1912 (37 Stat. 252).*

1123. *Instructor of military hygiene.*—The Secretary of War may detail an officer of the Medical Corps of the Army to the Military Academy as instructor of military hygiene. *Act of Mar. 4, 1909 (35 Stat. 1028).*

1124. *Professor of military hygiene.*—Hereafter any officer detailed from the Medical Corps of the Army as senior medical officer of the post at the Military Academy, whose rank shall not be below that of lieutenant-colonel, shall be the professor of military hygiene. *Act of Apr. 19, 1910 (36 Stat. 312).*

1125. *Professors, pay and allowances.*—Each of the professors of the Military Academy whose service as professor at the Academy exceeds ten years shall have the pay and allowances of colonel, and all other professors shall have the pay and allowances of lieutenant-colonels;[2] and the instructors of ordnance and science of

[1] See paragraph 1125, post.

[2] The act of April 29, 1812 (2 Stat. 702), conferred upon the professor of natural and experimental philosophy the pay and emoluments of a lieutenant colonel; and that of major upon the professors of engineering and mathematics. The professor of chemistry, mineralogy, and geology was placed upon the same footing, in respect to pay and emoluments, as the professor of mathematics, by section 19 of the act of July 5, 1838 (5 Stat. 259). By the act of March 3, 1851 (9 Stat. 594), the pay of the professors of engineering, natural and

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gunnery [1] and of practical engineering [2] shall have the pay and allowances of major; and hereafter there shall be allowed and paid to the said professors ten per centum of their current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said professors are hereby placed upon the same footing, as regards restrictions upon pay and retirement from active service, as officers of the Army. *Sec. 1336, R. S., as amended by Sec. 4, Act of June 23, 1879 (21 Stat. 34).*

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experimental philosophy, mathematics, and chemistry was fixed at $2,000 per annum, and that of the professors of French and drawing at $1,500 per annum these sums to be "in lieu of pay proper, ordinary rations, forage, and servants." By section 2 of the act of February 16, 1857 (11 Stat. 161), the pay of professor of Spanish was fixed at $2,000 per annum, subject to the restrictions contained in the act of March 3, 1851. By section 13 of the act of July 15, 1870 (16 Stat. 319), professors whose service exceeded thirty-five years were to receive the pay and allowances of colonels; those whose service had been less than thirty-five years, but exceeded twenty-five years, were to receive the pay and allowances of lieutenant colonels, and all other professors were to receive the pay and emoluments of major. By the act of February 28, 1873 (17 Stat. 479), professors whose service exceeded ten years were to receive the pay and emoluments of colonels, and all other professors the pay, etc., of lieutenant colonels. This statute was amended by section 4 of the act of June 23, 1874 (21 Stat. 34), so as to require ten years' service as a professor at the Military Academy as a condition precedent to receiving the pay and allowances of colonel.

By the act of August 9, 1912 (37 Stat. 264), it is provided "That any officer of the United States Army now holding the position of permanent professor at the United States Military Academy who on July first, nineteen hundred and fourteen, should have served not less than thirty-three years in the Army, one-third of which service shall have been as professor and instructor at the Military Academy, shall on that date have the rank, pay, and allowances of a colonel in the Army."

The professors of the Military Academy do not belong to the staff of the Army within the meaning of section 1205, Revised Statutes, since they have no military rank or grade. The fact that they are authorized by the President to wear the uniform of the rank as of which they are paid does not invest them with such rank. This can be given them by Congress alone. (Dig. Opin. J. A. G., McClure, 2066, par. 2.)

A captain of cavalry does not vacate his office as such by the acceptance of that of professor of the Military Academy, there being no incompatibility in the functions of the two offices. (Id., 1812.)

The professors of the Military Academy at West Point are commissioned officers of the Army, whose pay and allowances are assimilated to those of a lieutenant colonel and a colonel; and in case of such disability as is described in section 4693, Revised Statutes, they are entitled to pensions at the same rate with officers of the rank of lieutenant colonel. (XVII Opin. Att. Gen., 359.)

[1] The office of instructor of ordnance and gunnery was established by the Secretary of War, on the recommendation of the academic board, on December 31, 1856; the duties of the former instructor of artillery, which were not connected with instruction in the drill regulations of the arm, being transferred to the office thus established. By the act of June 12, 1858 (11 Stat. 333), the duty of instruction in the drill regulations was vested in the commandant of cadets and the assistant instructors authorized by that enactment. An officer of ordnance was assigned to duty as instructor of ordnance and gunnery by Special Orders, No. 31, H. Q. U. S. Military Academy on February 27, 1857, (See par. 1106, ante.)

[2] The office of instructor of practical military engineering was established by section 2 of the act of July 20, 1840 (5 Stat. 397); upon the recommendation of the Chief of Engineers, dated April 24, 1844, an officer of engineers was appointed to the office.

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1126. *Professors and associate professors, rank.*—The professors and the associate professor of the United States Military Academy shall have the actual rank in the United States Army now assigned to them by assimilation in the regulations of the Military Academy prescribed by the President of the United States, and that they shall exercise command only in the academic department of the United States Military Academy. *Act of June 28, 1902 (32 Stat. 409).*

1127. *Assistant professors, pay and allowances.*—Each assistant professor and each senior assistant instructor of cavalry, artillery, and infantry tactics shall receive the pay of a captain.[1] *Sec. 1337, R. S.*

1128. *Assistant instructors of tactics, pay and allowances.*—The assistant instructors of tactics commanding cadet companies at West Point shall receive the pay and allowances as assistant professors in the other branches of study.[2] *Act of Mar. 3, 1875 (18 Stat. 467).*

1129. *Professors, retirement.*—The professors of the Military Academy at West Point are placed on the same footing, as to retirement from active service, as officers of the Army. *Sec. 1333, R. S.*

1130. *Restriction on detail of graduates as professors and instructors.*—Hereafter no graduate of the Military Academy shall be assigned or detailed to serve at said Academy as a professor, instructor, or assistant to either, within two years after his graduation, and so much of the act of June thirtieth, eighteen hundred and eighty-two, as requires a longer service than two years for said assignments or details is hereby repealed.[3] *Act of July 26, 1894 (28 Stat. 151).*

1131. *Master of the sword, rank and pay.*—The master of the sword shall hereafter act as instructor of military gymnastics and physical culture at the Military Academy, and shall have the relative rank and shall be entitled to the pay, allowances, and emoluments of a first lieutenant, mounted: *Provided, however*, That whenever a vacancy shall occur in the office of master of the sword and instructor of military gymnastics and physical culture the said office shall cease and determine, and the duties thereunto pertaining shall thereafter be performed by an officer of the line of the Army to be selected for that purpose by the Secretary of War. *Sec. 1338, R. S., as amended by Act of Mar. 2, 1901 (31 Stat. 914).*

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[1] Assistant professors at the Military Academy are entitled to the quarters of captains. IX Opin. Att. Gen., 284. The distinction contended for at the Military Academy between academic and military rank is not allowable in the choice of quarters. (5 id., 627.)

[2] Section 2 of the act of July 20, 1840 (5 Stat. 398), contained the requirement that the pay and emoluments of instructors in cavalry, artillery, and infantry tactics should not be less than was allowed by law (captain mounted) to the assistant professor of mathematics. This statute was replaced by the act of June 12, 1858 (11 Stat. 333), which conferred the pay of captain mounted upon the senior assistant instructor in each of the arms of service.

[3] The act of June 30, 1882 (22 Stat. 123), contained the requirement that no graduate of the Military Academy should be assigned or detailed to serve as a professor, instructor, or assistant to either, within four years after his graduation.

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1132. *Same.*—The master of the sword shall have the relative rank and shall be entitled to the pay, allowances and emoluments of a captain mounted. *Act of Mar 3, 1905 (33 Stat. 850).*

1133. *Chaplain, appointment and tenure.*—The duties of chaplain at the Military Academy shall hereafter be performed by a clergyman to be appointed by the President for a term of four years, and the said chaplain shall be eligible for reappointment for an additional term or terms and shall, while so serving, receive the same pay and allowances as are now allowed to a captain mounted.[1] *Act of Feb. 18, 1896 (29 Stat. 8).*

1134. *Librarian, assistant librarian.*—The librarian and assistant librarian at the Military Academy shall each receive one hundred and twenty dollars a year additional pay.[2] *Sec. 1340, R. S.*

1135. *Adjutant.*—The adjutant of the Military Academy shall have the pay of an adjutant of a cavalry regiment.[3] *Sec. 1335, R. S.*

1136. *Quartermaster and commissary of cadets.*—The Secretary of War is hereby directed to detail a competent officer to act as quartermaster and commissary for the battalion of cadets, by whom all purchases and issues of supplies of all kinds for the cadets, and all provisions for the mess, shall be made, and that all supplies of all kinds and description shall be furnished to the cadets at actual cost, without any commission or advance over said cost; and such officer so assigned shall perform all the duties of purveying and supervision for the mess, as now done by the purveyor, without other compensation.[4] *Act of Aug. 7, 1876 (19 Stat. 126).*

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[1] The office of chaplain was established by the act of April 4, 1818 (3 Stat. 426), which authorized the appointment of a chaplain at the Military Academy, who shall also be professor of geography, history, and ethics. By the act of February 18, 1896 (29 Stat. 8), the professorship thus authorized was discontinued, the duties of chaplain being performed by the officer whose appointment was authorized by that statute, and the duty of giving instruction in history being transferred by executive regulation to the department of law.

[2] The annual acts of appropriation from that of February 18, 1871 (16 Stat. 414), to that of July 26, 1894 (28 Stat. 156), contained a provision authorizing the payment of $1,000 per annum for compensation of the librarian's assistant. In the acts of February 12, 1895 (28 Stat. 631), and March 6, 1896 (29 Stat. 49), the compensation of the librarian's assistant was fixed at $1,200 per annum.

Salary of librarian increased by act of March 3, 1905 (33 Stat. 854), from $2,500 to $3,000 and carried at the latter rate in the annual appropriation acts since that year. As the annual appropriation acts carry only $3,000 for the librarian, section 1340, R. S., is virtually repealed.

The employment of the services of civilian instructors, clerks, and other civilian employees is regulated by the annual acts of appropriation.

[3] Beginning with the act of March 4, 1909 (35 Stat. 1028), the annual appropriation acts have contained the following provision relative to the pay of the adjutant of the Military Academy: "For pay of one adjutant, who shall not be above the rank of captain, six hundred dollars."

[4] The annual appropriation acts from that of March 31, 1884 (23 Stat. 7), to that of March 2, 1907 (34 Stat. 1063), contained a provision for extra pay for the quartermaster and commissary of cadets at the rate of $700 per annum, in addition to his pay as a captain of infantry. In the act of May 28, 1908 (35 Stat. 431), this was changed to $600, "in addition to pay as captain," and has been so continued since. The act of June 30, 1892 (22 Stat. 123), authorizes the Secretary of War to detail a commissary sergeant to act as assistant to the commissary of cadets.

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1137. *Constructing quartermaster.*—For pay of one constructing quartermaster, in addition to his regular pay, one thousand dollars:[1] *Provided*, That so much of the Act approved March third, nineteen hundred and eleven, making appropriations for the support of the Military Academy for the fiscal year ending June thirtieth, nineteen hundred and twelve, as provided that the increase of salary of the constructing quartermaster should only apply during the term the office was held by the then incumbent is hereby repealed, and the additional pay thus provided is available for the present incumbent from the date he entered upon his duties. *Act of Aug. 9, 1912 (37 Stat. 252).*

1138. *Leaves of absence of officers, professors, etc.*—Leave of absence may be granted by the Superintendent, under regulations prescribed by the Secretary of War, to the professors, assistant professors, instructors, and other officers of the Academy, for the entire period of the suspension of the ordinary academic studies, without deduction from pay or allowances. *Sec. 1330, R. S.*

THE CORPS OF CADETS.

1139. *Number and appointment.*—The corps of cadets shall consist of one from each Congressional district, one from each Territory, one from the District of Columbia, two from each State at large, and thirty from the United States at large. They shall be appointed by the President, and shall, with the exception of the thirty cadets appointed from the United States at large, be actual residents of the Congressional or Territorial districts, or of the District of Columbia, or of the States, respectively, from which they purport to be appointed.[2] *Sec. 1315, R. S., as amended by Sec. 4, Act of June 6, 1900 (31 Stat. 656).*

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[1] This additional pay was first appropriated in act of March 2, 1907 (34 Stat. 1064), and provision therefor has been made in each annual appropriation since. The proviso "that this increased salary shall only apply during the time this office is held by the present incumbent," which is repealed by the act of August 9, 1912, supra, first occurs in the act of March 4, 1909 (35 Stat. 1028). The appropriation is repeated without any limitation in the act of March 4, 1913 (37 Stat. 857).

[2] The first authorization of the employment of cadets in the military service will be found in the act of May 9, 1794 (1 Stat. 366), for raising a corps of artillerists and engineers; the new organization was to be formed by the consolidation of the existing corps of artillery with the additional force therein authorized, and was to consist of four companies, to each of which two cadets were to be attached, with the pay, rations, and clothing of sergeants of artillery. An additional regiment of artillerists and engineers was established by the act of April 27, 1798 (id., 552), with the same organization as the regiment already in service; by section 3 of the act of March 3, 1799 (id., 750), the pay of cadets was fixed at ten dollars per month with two rations per day or their equivalent in money; by this enactment ten cadets were allowed for each regiment of cavalry and infantry and thirty-two for each regiment of artillery.

The act to fix the military peace establishment ,approved on March 16, 1802 (2 id., 132), provided for one regiment of artillerists and engineers; it was to consist of twenty companies, to each of which two cadets were attached. By

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1140. *Number at large.*—The number of cadets authorized to be appointed by the President from the United States at large shall not at any one time exceed forty. *Act of June 28, 1902 (32 Stat. 410).*

1141. *Increase in corps.*—Hereafter, for six years from July first, anno Domini, nineteen hundred and ten, whenever any cadet shall have finished three years of his course at the United States Military Academy, his successor may be admitted to the Academy; and the corps of cadets is hereby increased to meet this provision. *Act of Apr. 19, 1910 (36 Stat. 323).*

1142. *Appointee from Porto Rico.*—In addition to the Corps of Cadets now authorized by law, there shall be one from Porto Rico, who shall be a native of said island, to be appointed by the President of the United States. *Act of Mar. 3, 1903 (32 Stat. 1011).*

1143. *Appointees from the Philippine Islands.*—The Secretary of War is hereby authorized to permit not exceeding four Filipinos, to be designated, one for each class, by the Philippine Commission, to receive instruction at the United States Military Academy at West Point: *Provided*, That the Filipinos undergoing instruction, as herein authorized, shall receive the same pay, allowances, and emoluments as are authorized by law for cadets at the Military Academy appointed from the United States, to be paid out of the same appropriations: *And provided further*, That said Filipinos undergoing instruction on graduation shall be eligible only to commissions in the Philippine Scouts. And the provisions of section thirteen

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section 26 of this enactment authority was conferred upon the President to establish a corps of engineers, to which ten cadets were to be attached, and the monthly pay of the cadets was fixed at sixteen dollars and one ration per day; by section 27, the corps of engineers, when organized, was to be stationed at West Point and was to constitute the Military Academy. The acts of April 12, 1808 (2 id., 481), and June 11, 1812 (id., 671), authorized additions to the military establishment; by the former, 156 cadets were provided for, and by the latter, 64; in neither case, however, was the authorized establishment completed, nor does any considerable number of cadets seem to have been attached to the Military Academy, as is indicated by a report of the superintendent of January 5, 1810, at which date forty-seven cadets were undergoing instruction at the academy. An act making further provision for the Corps of Engineers, approved April 29, 1812 (id. 720), fixed the number of cadets in all arms of the service at 250, and authorized the President, in his discretion, to attach them, as students, to the Military Academy. The present apportionment by representative districts was established by section 2 of the act of March 1, 1843 (5 id., 604), which required cadets to be selected from the Congressional districts of the States or Territories from which the appointments purported to have been made. By this enactment authority was conferred upon the President to appoint ten cadets at large without being restricted to selection from Congressional districts. The act of March 3, 1875 (18 id., 467), authorized the President "to fill any vacancy occurring at said academy by reason of death or other cause of any person appointed by him;" but this clause was expressly repealed by section 4 of the act of June 11, 1878 (20 id., 111), which restricted the number of appointments at large to ten in all. The act of March 1, 1843, and section 10 of the act of March 2, 1899 (30 Stat. 979), which authorized the appointment of twenty cadets at large, were replaced by section 4 of the act of June 6, 1900 (31 id., 656), which fixed the number of cadets at one from each Congressional district, one from the District of Columbia, two from each State at large, and thirty from the United States at large.

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hundred and twenty-one, Revised Statutes, are modified in the case of the Filipinos undergoing instruction, so as to require them to engage to serve for eight years, unless sooner discharged, in the Philippine Scouts. *Act of May 28, 1908 (35 Stat. 441).*

1144. *Appointees from the District of Columbia.*—Section thirteen hundred and fifteen of the Revised Statutes of the United States, fixing the membership of the Corps of Cadets at the United States Military Academy, is hereby amended by changing the clause "one from the District of Columbia" so as to read "two from the District of Columbia." *Act of Aug. 9, 1912 (37 Stat. 252).*

1145. *Appointment in advance.*—Cadets shall be appointed one year in advance of the time of their admission to the Academy, except in cases where, by reason of death or other cause, a vacancy occurs which can not be provided for by such appointment in advance; but no pay or other allowance shall be given to any appointee until he shall have been regularly admitted, as herein provided; and all appointments shall be conditional, until such provisions shall have been complied with.[1] *Sec. 1317, R. S.*

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[1] *Appointments—How made.*—Each Congressional district and Territory, also the District of Columbia, is entitled to have one cadet at the Academy. Two cadets at large from each State, and thirty from the United States at large are also appointed. The appointments (except those at large) are made by the Secretary of War, at the request of the Representative or Delegate in Congress from the district or Territory; and the person appointed must be an actual resident of the district or Territory from which the appointment is made. Those for a State at large are made, each upon the request of a Senator from the State so entitled. The appointments at large are specially conferred by the President of the United States.

Manner of making applications.—Applications can be made at any time by letter to the Secretary of War, to have the name of the applicant placed upon the register that it may be furnished to the proper Representative or Delegate when a vacancy occurs. The application must exhibit the full name, date of birth, and permanent abode of the applicant, with the number of the Congressional district in which his residence is situated.

Date of appointments.—Appointments are required by law to be made one year in advance of the date of admission, except in cases where, by reason of death or other cause, a vacancy occurs which can not be provided for by such appointment in advance. These vacancies are filled in time for the next annual examination.

Alternates.—The Representative or Delegate in Congress may nominate a legally qualified second candidate, to be designated the alternate. The alternate will receive from the War Department a letter of appointment, and will be examined with the regular appointee, and if duly qualified will be admitted to the Academy in the event of the failure of the principal to pass the prescribed preliminary examinations. The alternate will not be allowed to defer his reporting at West Point until the result of the examination of the regular appointee is known, but must report at the time designated in his letter of appointment. The alternate, like the nominee, should be designated as nearly one year in advance of date of admission as possible.

There being no provision for the payment of the traveling expenses of rejected candidates for admission, no candidate should fail to provide himself in advance with the means of returning to his home in case of his rejection before either of the examining boards, as he may otherwise be put to considerable trouble, inconvenience, and even suffering on account of his destitute condition. If admitted, the money brought by him to meet such a contingency can be deposited with the treasurer on account of his equipment as a cadet or returned to his friends.

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1146. *Age of appointees.*—Appointees shall be admitted to the Academy only between the ages of seventeen and twenty-two years, * * *. *Sec. 1318, R. S.*

1147. *Qualifications for admission.*—Appointees shall be examined under regulations[1] to be framed by the Secretary of War before they shall be admitted to the Academy and shall be required to be well versed in such subjects as he may from time to time prescribe.[2] *Sec. 1319, R. S., as amended by Act of Mar. 2, 1901 (31 Stat. 911).*

1148. *Physical examination.*—Hereafter any candidate designated as principal or alternate for appointment as cadet may present himself at any time for physical examination at West Point, New York, or other prescribed places, as may be designated by the Secretary of War. *Act of Aug. 9, 1912 (37 Stat. 252).*

1149. *Dates of admission.*—Cadets appointed to the Military Academy at West Point, New York, for admission after the year nineteen hundred and seven, may be admitted on the first day of March in place of the first day of June. *Act of Mar. 2, 1907 (34 Stat. 1063).*

1150. *Oath.*—Each cadet shall, previous to his admission to the Academy, take and subscribe an oath or affirmation in the following form:

"I, A B, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State, county, or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the rules and articles governing the armies of the United States."

And any cadet or candidate for admission who shall refuse to take this oath shall be dismissed from the service. *Sec. 1320, R. S.*

1151. *Engagement for service.*—Each cadet shall sign articles, with the consent of his parents or guardian if he be a minor, [and] if any he have, by which he shall engage to serve eight years unless sooner discharged. *Sec. 1321, R. S.*

1152. *Traveling expenses of candidates.*—Hereafter the actual and necessary traveling expenses of candidates while proceeding from their homes to the Military Academy for qualification as cadets shall,

[1] For regulations prepared in accordance with the foregoing enactment see the Military Academy Regulations. Circulars containing the same information respecting the physical and mental examinations for admission are furnished candidates and others interested upon applications addressed to the Adjutant of the Military Academy at West Point, New York, or to the Adjutant-General of the Army in Washington.

[2] This enactment replaces the requirements of section 1319, Revised Statutes, act of June 16, 1866 (14 Stat. 359), *in pari materia*, which required candidates to "be well versed in reading, writing, and arithmetic, and to have a knowledge of the elements of English grammar, of descriptive geography, particularly that of the United States, and of the history of the United States."

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if admitted, be credited to their accounts and paid after admission from the appropriation for the transportation of the Army and its supplies. *Act of June 28, 1902 (32 Stat. 409).*

1153. *Pay and allowances.*—Hereafter the pay of cadets shall be fixed at five hundred dollars per annum and one ration per day, or commutation therefor, such commutation to be thirty cents per day, to be paid from the appropriation for the subsistence of the Army.[1] *Act of June 28, 1902 (32 Stat. 409).*

The pay of cadets at the Military Academy shall hereafter be six hundred dollars a year. *Act of May 11, 1908 (35 Stat. 108).*

Hereafter cadets shall be entitled to rations, or commutation therefor, as hitherto allowed under the Act approved June twenty-eight, nineteen hundred and two. *Act of May 28, 1908 (35 Stat. 430). Sec. 1339, R. S., as amended by above acts.*

1154. *Graduation and commission.*—That when any cadet of the United States Military Academy has gone through all its classes and received a regular diploma from the academic staff, he may be promoted and commissioned as a second lieutenant in any arm or corps of the Army in which there may be a vacancy and the duties of which he may have been judged competent to perform; and in case there shall not at the time be a vacancy in such arm or corps, he may, at the discretion of the President, be promoted and commissioned in it as an additional second lieutenant, with the usual pay and allowances of a second lieutenant, until a vacancy shall hap-

[1] The pay of cadets was fixed by the act of March 16, 1802 (2 Stat. 137), at sixteen dollars per month and two rations per day. By the act of March 3, 1857 (11 Stat. 252) their pay was fixed at thirty-two dollars per month. Section 3 of the act of April 1, 1864 (13 Stat. 39), contained the requirement that the cadets at the Military Academy should receive the same pay (five hundred dollars per annum) as the midshipmen at the Naval Academy; section 2 of the act of February 28, 1867 (14 Stat., 416) contained the requirement that they should also be entitled to the ration (one hundred and nine dollars and fifty cents annual commutation value) then allowed to active midshipmen. This fixed the pay and emoluments of a cadet at $609.50 per annum. The act of June 30, 1882 (27 Stat. 515), contained the requirement that no cadet should thereafter "receive more than at the rate of five hundred and forty dollars a year."

Fourteen dollars a month shall be deposited with the Treasurer from the pay of each cadet, to be applied, at the time of his graduation, to the purchase of a uniform and equipment. (Par. 72, Reg. U. S. M. A., 1911.)

A person appointed to a position in the Army, either as a cadet or an officer, becomes a cadet or officer de facto when he accepts the appointment; but, in view of the act of July 2, 1862 (12 Stat. 502), his pay can not commence until he takes the oath of office. When a candidate passes the examinations and enters upon the duties of a cadet, he thereby accepts his appointment, and his service in the Army begins for all purposes of longevity, but his pay can not commence until he takes the oath of office required by law. (3 Dig. 2d Comp. Dec., par. 884.) The requirements of section 1310 of the Revised Statutes that "no person who has served in any capacity in the military or naval service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion shall be appointed a cadet," were repealed by the act of March 31, 1896 (29 Stat. 84).

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pen.[1] *Sec. 1213, R. S., as amended by Act of May 17, 1886 (24 Stat. 50).*

1155. *One additional officer only to each company.*—Only one supernumerary officer shall be attached to any company at the same time under the provisions of the two preceding sections.[2] *Sec. 1215, R. S.*

1156. *Pay of graduated cadets.*—That every cadet who has heretofore graduated or may hereafter graduate at the West Point Military Academy, and who has been or may hereafter be commissioned a second lieutenant in the Army of the United States, under the laws appointing such graduates to the Army, shall be allowed full pay as second lieutenant from the date of his graduation to the date of his acceptance of and qualification under his commission and during his graduation leave, in accordance with the uniform practice which has prevailed since the establishment of the Military Academy. *Act of Dec. 20, 1886 (24 Stat. 351).*

1157. *Mileage of graduated cadets from home to first station.*—Hereafter a graduate of the Military Academy shall receive mileage as authorized by law for officers of the Army from his home to the station which he first joins for duty. *Act of Aug. 9, 1912 (37 Stat. 252).*

1158. *Organization into companies.*—The corps of cadets shall be arranged into companies, according to the directions of the superintendent, each of which shall be commanded by an officer of the Army, for the purpose of military instruction. To each company shall be added four musicians. The corps shall be taught and trained in all the duties of a private soldier, noncommissioned officer, and officer, shall be encamped at least three months in each year, and shall be taught and trained in all the duties incident to a regular camp. *Sec. 1322, R. S.*

1159. *Liability to duty.*—Cadets shall be subject at all times to do duty in such places and on such service as the President may direct. *Sec. 1323, R. S.*

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[1] The requirement of section 3 of the act of June 18, 1878 (20 Stat. 150). "That hereafter all vacancies in the grade of second lieutenant shall be filled by appointment from the graduates of the Military Academy so long as any such remain in service unassigned; and any vacancies thereafter remaining shall be filled by promotion of meritorious noncommissioned officers of the Army, recommended under the provisions of the next section of this act: *Provided*, That all vacancies remaining, after exhausting the two classes named, may be filled by appointment of persons in civil life," was repealed by section 5 of the act of July 30, 1892 (27 Stat. 336). (See the chapter entitled Commissioned Officers.)

[2] Section 1213, R. S., see par. 1154, ante. Section 1214, R. S., relates to promotion of noncommissioned officers.

The Secretary of War is authorized to assign recent graduates, noncommissioned officers, and civilians to the cavalry or infantry, although "additional" second lieutenants remain in the Engineers and Artillery, and no vacancies exist in the last-named branches. (XX Opin. Att. Gen., 149.)

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1160. *No study on Sunday.*—The Secretary of War shall so arrange the course of studies at the Academy that the cadets shall not be required to pursue their studies on Sunday.[1] *Sec. 1324, R. S.*

1161. *Instruction in physiology, etc.*—The nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of textbooks in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States.

SEC. 2. It shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases. *Act of May 20, 1886 (24 Stat. 69).*

1162. *Deficient cadets.*—No cadet who is reported as deficient, in either conduct or studies, and recommended to be discharged from the Academy shall, unless upon recommendation of the academic board, be returned or reappointed or appointed to any place in the Army before his class shall have left the Academy and received their commissions.[2] *Sec. 1325, R. S.*

1163. *Courts-martial for trial of cadets.*—The Superintendent of the Military Academy shall have power to convene general courts-martial for the trial of cadets, and to execute the sentences of such

[1] The course of study at the Military Academy is fixed in part by the statutes creating the several departments of instruction (paragraphs 1106 and 1119, ante) and other enactments of Congress (paragraph 1161, post), and in part by Executive regulation.

[2] Where a cadet was, by order of the Secretary of War, on the recommendation of the academic board, discharged from the Military Academy for deficiency in studies; *Held*, (1) that the order of discharge, having been completely executed, is beyond the power of revocation; (2) that section 1325, Revised Statutes, prohibits the returning or reappointing of the cadet to the Academy, except upon the recommendation of the academic board; (3) that Congress may thus limit or restrict the authority of the President to appoint cadets; (4) that accordingly it is not competent for the President to revoke the said order or to restore the cadet to the Academy, irrespective of the recommendation of the academic board. (XVII Opin. Att. Gen., 67.) Change of name by cadet. (Dig. Opin. J. A. G., 83, I G 4.)

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courts, except the sentences of suspension and dismission, subject to the same limitations and conditions now existing as to other general courts-martial.[1] *Sec. 1326, R. S.*

1164. *Hazing.*—The superintendent of the United States Military Academy, subject to the approval of the Secretary of War, shall make appropriate regulations for putting a stop to the practice of hazing, such regulations to prescribe dismissal, suspension, or other adequate punishment for infractions of the same, and to embody a clear definition of hazing.

That any cadet who shall be charged with offenses under such regulations which would involve his dismissal from the academy shall be granted, upon his written request, a trial by a general court-martial, and any cadet dismissed from the academy for hazing shall not thereafter be reappointed to the corps of cadets nor be eligible for appointment as a commissioned officer in the Army or Navy or Marine Corps until two years after the graduation of the class of which he was a member.[2] *Act of Apr. 19, 1910 (36 Stat. 323).*

MILITARY ACADEMY BAND.

1165. *Organization and allowances.*—The Military Academy band shall hereafter consist of one teacher of music, who shall be the leader of the band, one enlisted band sergeant and assistant leader, and of

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[1] These courts have the same composition as the general courts-martial authorized to be convened by the seventy-second and seventy-third articles of war.

Professors of the Military Academy are "commissioned officers of the Army." Decision of the Secretary of War, May 27, 1857. But they are not commissioned officers within the meaning of the seventy-fifth article of war, and therefore can not be detailed as members of courts-martial. Scott's Digest, paragraph 169, note 16. The President may, by his regulations of the civil police of the Academy, invest them with authority adequate to all the purposes of their professorships; but he can invest them with no portion of judicial power to affect the life or liberty of others. (I Opin. Att. Gen., 469; see also last clause of paragraph 1126, ante.)

The undergraduate cadets are not commissioned officers, and are, therefore, not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial. (VII Opin. Att. Gen., 323.) In their internal academic organization as officers, noncommissioned officers, and privates they are not subject to the articles of war as respects their relation to one another, but only as respects their relation to commissioned officers of the Army, on duty as such at the Academy. (Id.)

Cadets are amenable to trial by court-martial for violations of the regulations of the Academy as "conduct to the prejudice of good order and military discipline." (Dig. Opin. J. A. G. 82, I. D. 3a.) As to measures of school discipline see Dig. J. A. G. 82, I. D 3 b (1).

Where a cadet at West Point is sentenced by a court-martial to be dismissed the service, and the President commutes the sentence to suspension for a fixed period, it will not be inferred that his purpose was to deprive him of pay unless it is expressly so stated or is clearly established that such was his purpose. (Conrad *v.* U. S., 32 Ct. Cls., 139.) Where the President commutes the sentence of one cadet to suspension and of another to suspension without pay it is conclusive that he did not intend the former sentence to extend to loss of pay. (Id.)

[2] This enactment replaces the penalty imposed by the act of March 2, 1901 (31 Stat. 911), which in turn replaced that imposed by the act of March 31, 1884 (23 Stat. 7).

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forty enlisted musicians. The teacher of music shall receive the pay of a second lieutenant, not mounted; * * * and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of cavalry; and the said teacher of music, the band sergeant and assistant leader, and the enlisted musicians of the band shall be entitled to the same benefits in respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other officers or enlisted men of the Army. *Sec. 1111, R. S., as amended by Act of Mar. 3, 1905 (33 Stat. 853).*

1166. *Pay.*—For pay of military band, one band sergeant and assistant leader, nine hundred dollars;

Twelve enlisted musicians, at forty-five dollars per month, six thousand four hundred and eighty dollars;

Twelve enlisted musicians, at thirty-six dollars per month, five thousand one hundred and eighty-four dollars;

Sixteen enlisted musicians, at thirty dollars per month, five thousand seven hundred and sixty dollars;

* * * * * * *

For pay of field musicians: One sergeant, six hundred dollars;

One corporal, two hundred and fifty-two dollars;

Twenty-two privates, at one hundred and eighty dollars each, three thousand nine hundred and sixty dollars.

* * * * * * *

Hereafter the monthly pay during the first enlistment of enlisted men of the band and field musicians of the United States Military Academy shall be as hereinbefore stated, and the continuous service pay of all grades shall be the same as provided in the Act approved May eleventh, nineteen hundred and eight, entitled "An Act making appropriation for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and nine." *Act of May 28, 1908 (35 Stat. 431).*

1167. *Music furnished outside reservation.*—The band or members thereof and the field musicians of the Military Academy shall not receive remuneration for furnishing music outside the limits of the military reservation when the furnishing of such music places them in competition with local civilian musicians. *Id., 432.*

DETACHMENTS OF ENLISTED MEN.

1168. *Army service men, Quartermaster Corps.*—The enlisted men known as the artillery detachment at West Point shall be mustered out of the service as artillery men and immediately reenlisted as Army Service men in the Quartermaster's Department, continuing to perform the same duties and to have the same pay, allowances,

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rights, and privileges, and subject to the rules, regulations, and laws in the same manner as if their service had been continuous in the artillery, and their said service shall be considered and declared to be continuous in the Army.[1] *Act of June 20, 1890 (26 Stat. 167).*

1169. *Same—Not entitled to extra duty pay.*—Hereafter no part of the moneys appropriated for use of the Quartermaster's Department shall be used in payment of extra duty pay for the Army service men in the Quartermaster's Department at West Point. *Act of Mar. 2, 1907 (34 Stat. 1167).*

1170. *Restriction on strength of detachments.*—The detachments of enlisted men at the Military Academy, heretofore designated as the General Army Service, Quartermaster's Department, and the cavalry detachment, shall be fixed at such numbers, not exceeding two hundred and fifteen enlisted men in both detachments, as in the opinion of the Secretary of War the necessities of the public service may from time to time require; but the number of enlisted men of the Army shall not be increased on account of this proviso or the two preceding paragraphs of this act.[2] *Act of Feb. 10, 1897 (29 Stat. 519).*

1171. *Engineer detachment.*—Hereafter there shall be maintained at the United States Military Academy an engineer detachment, which shall consist of one first sergeant, one quartermaster sergeant, eight sergeants, ten corporals, two cooks, two musicians, thirty-eight first-class privates, and thirty-eight second-class privates;

For pay of such engineer detachment, twenty-four thousand dollars; additional pay for length of service, six thousand four hundred and eight dollars: *Provided*, That the enlisted men of said detachment shall receive the same pay and allowances as are now or may be hereafter authorized for corresponding grades in the battalions of engineers: *Provided further*, That nothing herein shall be so construed as to authorize an increase in the total number of enlisted men of the Army now authorized by law. *Act of Aug. 9, 1912 (37 Stat. 254).*

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[1] The act of June 20, 1890 (26 Stat. 167), which changed the name of the artillery detachment at West Point to "Army Service men in the Quartermaster's Department," contemplated only a change of name of the corps, without affecting their duties, pay, or allowances, including extra duty and extra pay therefor. (IV Comp. Dec., 353.) The act of June 6, 1900 (31 Stat. 647), makes provision for the pay of an artillery detachment of forty enlisted men. This number has been increased from time to time until one hundred and thirty-six enlisted men are provided for in the act of March 4, 1913 (37 Stat. 857).

[2] The act of April 26, 1898 (30 Stat. 365), which provides that in time of war no additional compensation shall be allowed to soldiers performing what is known as "extra or special duty," applies to enlisted men at the Military Academy. (4 Dec. Comp., 616.)

The act of July 26, 1894 (28 Stat. 155), conferred authority upon the Secretary of War to increase the strength of the Army Service Detachment of the Quartermaster's Department to one hundred and fifty men. The act of March 6, 1896 (29 Stat. 48), fixes the strength of the cavalry detachment as follows: One first sergeant, five sergeants, four corporals, two farriers, one saddler, one wagoner, and fifty-two privates. The authorized strength of these detachments is now 215 enlisted men.

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THE LIBRARY.

1172. *Senate documents for library.*—The Secretary of the Senate shall furnish annually to the library of the Academy one copy of each document published, during the preceding year, by the Senate. *Sec. 1332, R. S.*

1173. *Depository of Government publications.*—The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications, in the same form as supplied to other depositories, to each of said libraries.[1] *Sec. 98, Act of Jan. 12, 1895 (28 Stat. 624).*

THE BOARD OF VISITORS.

1174. *How constituted and appointed.*—That the Act approved May twenty-eighth, nineteen hundred and eight, be amended and reenacted so as to read as follows:

That hereafter the Board of Visitors to the Military Academy shall consist of five members of the Committee on Military Affairs of the Senate and seven members of the Committee on Military Affairs of the House of Representatives, to be appointed by the respective chairmen thereof; the members so appointed shall visit the Military Academy annually at such time as the chairman of said committees shall appoint, and the members from each of said committees may visit said academy together or separately as the said committees may elect during the session of Congress; and the superintendent of the academy and the members of the Board of Visitors shall be notified of such date by the chairman of the said committees. The expenses of the members of the board shall be their actual expenses while engaged upon their duties as members of said board not to exceed five dollars per day and their actual expenses of travel by the shortest mail routes: *Provided further*, That so much of sections thirteen hundred and twenty-seven, thirteen hundred and twenty-eight, and thirteen hundred and twenty-nine, Revised Statutes of the United States, as is inconsistent with the provisions of this Act are hereby repealed. *Act of Aug. 9, 1912 (37 Stat. 257).*

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[1] The maintenance of the library is provided for in the annual acts of appropriation for the support of the Military Academy. Beginning with the act of May 1, 1888 (25 Stat. 112), said acts have contained the following provision: "That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best." Also beginning with act of March 4, 1909 (35 Stat. 1037), they have contained the following: "Section thirty-six hundred and forty-eight, Revised Statutes, shall not apply to subscriptions for foreign, professional, and other newspapers and periodicals, to be paid for from any of the foregoing appropriations." Section 3648 prohibits the advances of public moneys.

An appropriation for a library is a specific appropriation for books and other publications necessary or appropriate therefor. (VI Comp. Dec., 736.)

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1175. *Duties.*—It shall be the duty of the board of visitors to inquire into the actual state of the discipline, instruction, police administration, fiscal affairs, and other concerns of the Academy. The visitors appointed by the President shall report thereon to the Secretary of War, for the information of Congress, at the commencement of the session next succeeding such examination, and the Senators and Representatives designated as visitors shall report to Congress, within twenty days after the meeting of the session next succeeding the time of their appointment, their action as such visitors, with their views and recommendations concerning the Academy. *Sec. 1328, R. S.*

MISCELLANEOUS.

1176. *Additional pay of certain enlisted men.*—The noncommissioned officer in charge of mechanics and other labor at the Military Academy, the soldier acting as clerk in the adjutant's office, and the four enlisted men in the philosophical and chemical departments and lithographic office, shall receive fifty dollars a year additional pay. *Sec. 1341, R. S.*

1177. *Contingencies of Superintendent.*—For contingencies for Superintendent of the Academy, one thousand dollars.[1] *Act of Mar. 6, 1896 (29 Stat. 49).*

1178. *Contingent fund.*—All funds arising from the rent of the hotel on Academy grounds, and other incidental sources, from and after this date be, and are hereby, made a special contingent fund, to be expended under the supervision of the Superintendent of the Academy, and that he be required to account for the same, annually, accompanied by proper vouchers to the Secretary of War. *Act of May 1, 1888 (25 Stat. 112). Provided,* That all proceeds of sales of gas [shall] be paid into the post fund. *Act of Mar. 1, 1893 (27 Stat. 520).*

1179. *Proceeds of sale of unserviceable material.*—When any instrument, apparatus, implements, or materials which have been heretofore or may hereafter be purchased or acquired for the use of any department of instruction or for the maintenance and operation of

[1] Any appropriation for contingencies for the Superintendent of the Military Academy is available for such casual expenses as are necessary, or at least appropriate and convenient, in order to the performance of the duties required by law of the Superintendent. * * * The certificate of the Superintendent, as to the correctness and justness of expenditures from the appropriation for contingencies for said Superintendent may be accepted in the adjustment and settlement of Military Academy accounts. (3 Dig. 2d Comp. Dec., par. 828.)

All accounts for the expenditure of public moneys should be itemized so far as practicable, and a discretion given to the officer having control of an appropriation does not dispense with this requirement. (IV Comp. Dec., 159.)

An appropriation for contingencies for the Superintendent of the Military Academy is an appropriation for purposes of a contingent character—that is, such as might or might not happen, and which Congress could not easily foresee, and therefore could not provide for definitely. (3 Dig. Dec. 2d Comp., par. 827.)

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the waterworks are no longer needed or are no longer serviceable they may be sold in such manner as the superintendent may direct and the proceeds credited to the appropriation for the department or the waterworks for which they were purchased or acquired. *Act of Aug. 9, 1912 (37 Stat. 260).*

1180. *The Cullum Memorial Hall.*—The Memorial Hall to be erected under the provisions of this act shall be a receptacle of statues, busts, mural tablets, and portraits of distinguished and deceased officers and graduates of the Military Academy, of paintings of battle scenes, trophies of war, and such other objects as may tend to give elevation to the military profession; and to prevent the introduction of unworthy subjects into this hall the selection of each shall be made by not less than two-thirds of the members of the entire academic board of the United States Military Academy, the vote being taken by ayes and nays and to be so recorded. *Sec. 6, Act of July 23, 1892 (27 Stat. 263).*

1181. *Buildings for religious worship.*—The Secretary of War, in his discretion, may authorize the erection of a building for religious worship by any denomination, sect, or religion on the West Point Military Reservation: *Provided*, That the erection of such building will not interfere with the uses of said reservation for military purposes. Said building shall be erected without any expense whatever to the Government of the United States, and shall be removed from the reservation, or its location changed by the denomination, sect, or religious body erecting the same whenever, in the opinion of the Secretary of War, public or military necessity shall require it, and without compensation for such building or any other expense whatever to the Government. *Act of July 8, 1898 (30 Stat. 722).*

1182. *The Army War College.*—For hire of clerks, purchase of stationery, furniture, and for contingent expenses incident to the establishment of the Army War College, having for its object the direction and coordination of the instruction in the various service schools, extension of the opportunities for investigation and study in the Army and militia of the United States, and the collection and dissemination of military information, twenty thousand dollars. *Act of May 26, 1900 (31 Stat. 209).*

1183. *The service schools.*—United States service schools: To provide means for the theoretical and practical instruction at the Staff College (including the Army School of the Line,[1] Army Field Engineer School, and the Army Signal School) at Fort Leavenworth,

[1] The Infantry and Cavalry School was established at Fort Leavenworth, Kans., in pursuance of General Orders, No. 42, Adjutant-General's Office, of May 7, 1881. Although not created by statute, its existence was recognized by Congress in several acts of appropriations, beginning with the act of March 2, 1889. It has been superseded by the "Army School of the Line," which was first recognized by statute in the act of March 3, 1909 (35 Stat. 733).
For complete list of service schools see par. 449, A. R., 1913.

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Kansas, the Mounted Service School at Fort Riley, Kansas, and the School of Fire for Field Artillery at Fort Sill, Oklahoma, by the purchase of text-books, books of reference, scientific and professional papers, the purchase of modern instruments and material for theoretical and practical instruction, and for all other absolutely necessary expenses, to be allotted in such proportions as may, in the opinion of the Secretary of War, be for the best interests of the military service, $30,350. *Act of Mar. 2, 1913 (37 Stat. 704).*

* * * That from the enlisted force of the army now provided by law the President may authorize the organization of school detachments at each of the service schools, and may authorize the appointment therein of such noncommissioned officers, mechanics, artificers, farriers, horseshoers, and cooks as may be necessary for the administration of such school: *Provided*, That nothing herein shall be construed as to authorize an increase in the total number of enlisted men of the army now authorized by law. *Act of Mar. 3, 1909 (35 Stat. 733).*

1184. *The Engineer School.*—Equipment and maintenance of the Engineer School at Washington Barracks, District of Columbia, including purchase of instruments, machinery, implements, models, and materials, for the use of the school and for instruction of engineer troops in their special duties as sappers and miners; for land mining, pontooning, and signaling; for purchase and binding of professional works and periodicals of recent date treating of military and civil engineering and kindred scientific subjects for the library of the United States Engineer School, * * * dollars.[1] *Act of Mar. 2, 1913 (37 Stat. 719).*

1185. *The artillery schools.*—Coast Artillery School, Fort Monroe, Virginia.[2] For incidental expenses of the school, including chem-

[1] The United States Engineer School was established by Executive order, but has been recognized in the several acts of appropriation from the act of March 3, 1873 (17 Stat. 546), down to the present time. It was originally located at Fort Totten, Willets Point, N. Y., but was removed in 1902 to Washington Barracks, D. C. (See General Orders 155, A. G. O., Nov. 27, 1901.)

[2] The Artillery School was established at Fortress Monroe, Va., in pursuance of General Orders, No. 18, Adjutant-General's Office, of April 5, 1824. It ceased to exist, in 1835, by reason of the transfer of the troops composing the school to other duties. It was reestablished by General Orders, No. 9, Adjutant-General's Office, of October 30, 1856. A code of regulations and plan of instruction was approved by the Secretary of War and published to the Army in General Orders, No. 5, Adjutant-General's Office, of May 18, 1858. The school was again discontinued at the outbreak of the War of the Rebellion in 1861. It was reorganized by General Orders, No. 99, Adjutant-General's Office, of November 13, 1867. Although not created by statute, its existence has been recognized and the courses of study pursued have been sanctioned by Congress in several acts of appropriation. (See the various acts of appropriation from that of June 20, 1878 (20 Stat. 223), down to the present time). It was first appropriated for as the "Coast Artillery School" in the act of March 3, 1909 (35 Stat. 733). In the act of August 24, 1912 (37 Stat. 570), under the appropriation for "United States Service Schools" provision is made for a "School of Fire for Field Artillery at Fort Sill, Okla.," and this provision is continued in the act of March 2, 1913 (37 Stat. 704).

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icals, stationery, hardware; cost of special instruction of officers detailed as instructors; extra-duty pay to soldiers necessarily employed for periods not less than ten days as artificers on work in addition to and not strictly in line with their military duties, such as carpenters, blacksmiths, draftsmen, printers, lithographers, photographers, engine drivers, telegraph operators, teamsters, wheelwrights, masons, machinists, painters, overseers, laborers; office furniture and fixtures, machinery, and unforeseen expenses, $10,000.

For purchase of engines, generators, motors, machines, measuring instruments, special apparatus and materials for the division of the enlisted specialists, $7,000.

For purchase of special apparatus and materials and for experimental purposes for the department of artillery and land defense, $3,000.

For purchase of engines, generators, motors, machines, measuring instruments, special apparatus and materials for the department of engineering and mine defense, $5,500.

For purchase and binding of professional books of recent date treating of military and scientific subjects for library and for use of school, $2,500. * * * *Act of Mar. 2, 1913 (37 Stat. 705).*

1186. *The Mounted Service School.*—That the Secretary of War be, and he is hereby, authorized and directed to establish upon the military reservation at Fort Riley, a permanent school of instruction for drill and practice for the cavalry and light artillery service of the Army of the United States, and which shall be the depot to which all recruits for such service shall be sent; and for the purpose of construction of such quarters, barracks, and stables as may be required to carry into effect the purposes of this act the sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.[1] *Act. of Jan. 29, 1887 (24 Stat. 372).*

1187. *Leaves of absence of instructors at service schools.*—The provisions of section thirteen hundred and thirty, Revised Statutes, authorizing leaves of absence to certain officers of the Military Academy, during the period of the suspension of the ordinary academic studies, without deduction from pay and allowances, be, and are hereby, extended to include officers on duty exclusively as instructors at the service schools on approval of the officer in charge of said schools. *Act of Mar. 23, 1910 (36 Stat. 244).*

[1] The Cavalry and Light Artillery School was established in pursuance of the act of January 29, 1887, by General Orders, No. 17, Adjutant-General's Office, of March 14, 1892. See also in connection with this school the acts of October 2, 1888 (25 Stat. 534), and March 2, 1889 (id., 966). This school has been superseded by the "Mounted Service School at Fort Riley, Kans.," and provision has been made therefor under that title beginning with the act of March 3, 1909 (35 Stat. 733). (See par. 1183, ante.)

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1188. *Prizes for graduates from Army schools for bakers and cooks.*—For providing prizes to be established by the Secretary of War for enlisted men of the Army who graduate from the Army schools for bakers and cooks, the total amount of such prizes at the various schools not to exceed nine hundred dollars per annum, * * * dollars.[1] *Act of Mar. 2, 1907 (34 Stat. 1166).*

[1]A similar provision has occurred in the several annual Army appropriation acts since this enactment.

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CHAPTER XXIX.

CONTRACTS AND PURCHASES.

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GENERAL PROVISIONS.

1189. *Contracts under direction of Secretary of War.*[1]—All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively.[2]

[1] The United States in its political capacity may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the departments to which those powers are intrusted, enter into contracts not prohibited by law and appropriate to the just exercise of these powers; no legislative authorization is required, such power being incident to the general right of sovereignty. (Dugan *v.* U. S., 3 Wheaton, 172; U. S. *v.* Tingey, 5 Peters, 114; U. S. *v.* Bradley, 10 id., 343; U. S. *v.* Linn, 15 id., 290; Cotton *v.* U. S., 11 Howard, 229; Fowler *v.* U. S., 3 Ct. Cls., 43; Allen *v.* U. S., id., 91.)

[2] Under this statute the Secretary of War is the source of all authority to make contracts or purchases in all branches of the military establishment. "Whether he makes the contracts himself, or confers the authority upon others, it is his duty to see that they are properly and faithfully executed; and if he becomes satisfied that contracts which he has made himself are being fraudulently executed, or those made by others were made in disregard of the rights of the Government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the Government against the dishonesty of subordinates." (U. S. *v.* Adams, 7 Wall., 463, 477; Parish *v.* U. S., 8 Wall., 489.)

The head of an Executive Department may, when not prejudicial to the interests of the Government, or for its benefit, alter or modify the terms of a contract made under his direction, but his subordinates may not take such action without express authority from him. (2 Comp. Dec., 182.)

The laws governing the purchase of supplies for the Army are equally applicable whether the purchases are made from funds received from the sale of stores or from the regular appropriations available therefor. (3 Dig. 2d Comp. Dec., 287.)

The Secretary of War has authority to extend the time for the execution of a contract made on behalf of his department when the interests of the Government are not thereby prejudiced, and particularly when its noncompletion within the time limited is not due to the negligence of the contractor. (2 Comp. Dec., 242; Solomon *v.* U. S., 19 Wall., 17; U. S. *v.* Corliss Steam Engine Co., 91 U. S., 321; XVIII Opin. Att. Gen., 101; 2 Comp. Dec., 635.)

Approval of contract by superior authority.—Where a contract in terms "is subject to the approval of the Quartermaster General," approval is a condition precedent to the legal effect of the agreement. (Darragh *v* U. S., 33 Ct. Cls., 377; Monroe & Richardson *v.* U. S., 35 id., 199; Cathell *v.* U. S., 46 id., 368; Monroe *v.* U. S., 184 U. S., 524.) The refusal of the Qartermaster General to approve a contract after work has been begun by the contractor is not a rescission. The contractor who begins work before approval does so at his own risk; and if he is paid for the work done, he can not recover profits as if there had been a breach. (Id.) Such approval need not be in writing. (Speed's Case, 8 Wallace, 77.)

Government contracts, by whom made, binding force, etc.—Where a public agent acts in the line of his duty and by legal authority, his contracts made

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And all agents or contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in the manner before prescribed. *Sec. 3714, R. S.*

1190. *Unauthorized contracts prohibited.*—No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, transportation, or *medical and hospital supplies*,[1] which, however, shall not exceed the necessities of the current year.[2] *Sec. 3732, R. S., as amended by Act of June 12, 1906 (34 Stat. 255).*

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on account of the Government are public and not personal. They inure to the benefit of and are obligatory on the Government, not the officer. (Hodgin *v.* Dexter, 1 Cranch, 345, 363; Parks *v.* Ross, 11 Howard, 362.) The Government is not bound by the act of its agent, unless it clearly appear that he acted within the scope of his authority, or was employed as a public agent to do, or was held out as having authority to do, such act. (Whiteside *v.* U. S., 93 U. S., 247; Lee *v.* Munroe, 7 Cranch, 366; Filer *v.* U. S., 9 Wall., 45.) Where service was performed under a general appropriation, the contractor is not bound to know the condition of the appropriation. (Myerle *v.* U. S., 33 Ct. Cls., 1.)

See note to paragraph 1211, post.

[1] The words "medical and hospital supplies" were added by act of June 12, 1906 (34 Stat. 255).

[2] The United States when it enters into a contract with an individual relinquishes its sovereign character *quoad* that transaction is subject to the rules of right and justice between man and man, and is controlled by the same laws that govern individuals with respect to such contract. (Clark *v.* U. S., 6 Wallace, 546; U. S. *v.* Smoot, 15 id., 47; Cooke *v.* U. S., 91 U. S., 398; U. S. *v.* Bostwick, 94 U. S., 592; Mann *v.* U. S., 3 Ct. Cls., 404; Chic. R. R. Co. *v.* U. S. 104, U. S., 680; U. S. *v* No. Am. Com. Co., 74 Fed. Rep., 145.) The United States is liable in damages for breach of contract to the same extent as an individual. (Chicago R. R. Co. *v.* U. S., 104 U. S., 680; Eastern R. R. Co. *v.* U. S., 129, U. S., 396.) Such right of action against the United States, however, is subject to the limitation that the Government can not be sued without its consent. (U. S. *v.* McLemore, 4 Howard, 286; U. S. *v.* Clarke, 8 Peters, 436, 444; DeGroot *v.* U. S., 5 Wallace, 419; U. S. *v.* Eckford, 6 id., 484; U. S. *v.* Lee, 106 U. S., 204; Nock *v.* U. S., 2 Ct. Cls., 451.) Such consent to be sued, in respect to certain causes of action, has been given by the establishment of the Court of Claims. (For the jurisdiction of this court, see Chapter VII, ante.)

The restrictions of section 3732, Revised Statutes, are in the alternative, prohibiting a contract or purchase on the part of the United States unless "authorized by law" or unless such contract or purchase is made "under an appropriation adequate to its fulfillment." Contracts to be valid must be shown to come under one or the other of these provisions. (Shipman *v.* U. S., 155 U. S., 500.)

When the authority to enter into a contract for a particular work in behalf of the United States depends wholly upon an appropriation of money made for that purpose, no officer of the Government has power to create a liability therefor beyond the amount of the appropriation, and a contractor can not recover more than the money appropriated, whatever may be the extent of his work. When an alleged liability rests wholly upon the authority of an appropriation they must stand or fall together, so that when the latter is exhausted the former is at an end, to be revived, if at all, only by subsequent legislation by Congress. (Shipman *v.* U. S., 18 Ct. Cls., 138, 147; McCullom *v.* U. S., 17 id., 92, 103; Trenton Co. *v.* U. S., 12 id., 147, 157.) A contract in excess of the appropriation would not bind future appropriations even if con-

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1191. *Building contract not to exceed appropriation.*—No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.[1] *Sec. 3733, R. S.*

1192. *Same—Penalty.*—Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years. *Sec. 98 (Criminal Code) Act of Mar. 4, 1909 (35 Stat. 1106).*

1193. *Sites for buildings.*—No money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor. *Act of Mar. 3, 1875 (18 Stat. 395).*

1194. *Contracts for stationery.*—It shall not be lawful for any of the Executive Departments to make contracts for stationary or other supplies for a longer term than one year from the time the contract is made. *Sec. 3735, R. S.*

1195. *Voluntary service—Exceptions.*—Hereafter no Department or officer of the United States shall accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.[2] *Act of May 1, 1884 (23 Stat. 17).*

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ditioned on such appropriations. (15 Op. Atty. Gen., 235); and if a future appropriation is made, this gives rise to a new power to contract. (3 Comp. Dec., 438; 4 id., 318; 5 id., 968; 9 id., 284; 13 id., 478; 14 id., 755; Chase *v.* U. S., 155 U. S. 500.)

If an officer is clothed with authority to do a piece of work without limitation as to cost, the contracts made by him therefor are binding upon the Government whether money is appropriated for the purpose or not. (Shipman *v.* U. S., 18 id., 138; Collins *v.* U. S., 15 id., 22, 35; XIII Op. Att. Gen., 315; XV id., 236.)

Acknowledgments and promises made by executive officers of the Government do not bind the United States when they are not made under express or implied authority of Congress. (Leonard et al. *v.* U. S., 18 Ct. Cls., 382.)

[1] Authority to contract for the completion of an entire structure, the plan of which has been determined on, can not be inferred from the mere fact that an appropriation of a certain sum, to be expended on the structure, has been made. Hence a contract, though it be good to the extent of such appropriation, could not affix itself to future appropriations and control their expenditure. A contract of this character would be in violation of the spirit of section 3, act of July 25, 1868 (sec. 3733, R. S.), if not of its express terms. (XV Op. Att. Gen., 236.)

Under section 5 of the act of June 20, 1874 (18 Stat. 111), all appropriations for "public buildings" are available until otherwise ordered by Congress. (3 Dig. 2d Comp. Dec., 29.) A subappropriation for a public building must, under the act of June 20, 1874 (18 Stat. 110, 111), remain available until its object has been accomplished or until it has been exhausted, unless otherwise ordered by Congress. (Id. See also 2 Comp. Dec., 365; 3 id., 487.)

[2] Denison *v.* U. S., 168 U. S., 241. See also par. 37, ante.

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ADVERTISING.

1196. *Advertising—Exceptions.*—All purchases and contracts for supplies[1] or services in any of the Departments of the Government, except for personal services, shall be made by advertising[2] a sufficient time previously for proposals respecting the same when the public exigencies do not require the immediate delivery of the articles or performance of the service. When immediate delivery or performance is required by the public exigency[3] the articles or

[1] The word "supplies" as used in section 3709 of the Revised Statutes evidently has reference to those things which the well-known needs of the public service will from time to time require in its different branches for its successful and efficient administration, and the statute was intended to afford the Government the pecuniary benefits, as well as the protection against fraud and favoritism, which open and honest competition is always likely to secure. It could not have been in the mind of the lawmaking power to require that purchases could only be made after advertisement of small articles which may occasionally be needed, and where in many cases the cost of advertising itself would exceed the value of the article purchased. It can not be said that such cases are governed by the emergency provision in the statute, for there may be, and are, many instances where the officer could not truthfully certify that immediate delivery was necessary. (3 Dig. 2d Comp. Dec., 288.)

[2] The act of March 2, 1861, sec. 3709, R. S., while requiring such advertisement as the general rule, invests the officer charged with the duty of procuring supplies or services with a discretion to dispense with advertising if the exigencies of the public service require immediate delivery or performance. It is too well settled to admit of dispute at this day that where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract can not be made to depend on the degree of wisdom or skill which may have accompanied its exercise. (U. S. *v.* Speed, 8 Wall., 77, 83; Child *v.* U. S., 4 Ct. Cls., 176; Mason *v.* U. S., 4 Ct. Cls., 495; Wentworth *v.* U. S., 5 Ct. Cls., 302. See, also, III Comp. Dec., 175, 314, 470.)

[3] Exigencies growing out of a state of war, or hostilities with Indians, were probably mainly had in view, and it is exigencies of this class which have been considered in the adjudged cases in the Supreme Court and Court of Claims. (See U. S. *v.* Speed, 8 Wallace, 83; Reeside *v.* U. S., 2 Ct. Cls., 1; Mowry *v.* U. S., id., 68; Stevens *v.* U. S., id., 95; Floyd *v.* U. S., id., 429; Crowell *v.* U. S., id., 501; Baker *v.* U. S., 3 id., 343; Henderson *v.* U. S., 4 id., 75; Childs *v.* U. S., id., 176; Wentworth *v.* U. S., 5 id., 302; Wilcox *v.* U. S., id., 386; Cobb *v.* U. S., 7 id., 471, and 9 id., 291; Thompson *v.* U. S., id., 187; McKee *v.* U. S., 12 id., 505.) It is clear, however, that other exigencies may exist requiring that contracts or purchases be made at once or without the delay incident to advertising for proposals. Thus a loss of stores, structures, etc., on hand, caused by an *actus Dei* or *vis major*, as fire, storm, freshet, or a sudden riot or violent disorder; or a loss of supplies occasioned by the neglect of military subordinates in charge; or a failure of a contractor to fulfill a contract for supplies, transportation, or other service, might properly be regarded as constituting an "exigency" under the statute, if of such magnitude or injurious consequence to the Army as to necessitate an immediate making good of the deficiency. (McKee *v.* U. S., 12 Ct. Cls., 529.) The general rule, however, of the statute in requiring a notice and invitation to the public as a preliminary to the awarding of a contract, is founded upon a sound and well-considered public policy, and exceptions thereto, especially in time of peace, should be recognized as admissible only where, if the rule were strictly complied with, the public interests would manifestly be most seriously prejudiced. (Dig. Opin. J. A. G. (1912), 293 A.)

As to the authority who is to decide whether there exists such an exigency as is contemplated by the statute, the Supreme Court, in the United States *v.* Speed, 8 Wallace, 83, has held that it is "the officer charged with the duty of procuring supplies or services who is invested with this discretion." This description is rather general, nor is the term "the purchasing officer," by which the Court of Claims explains it, in Thompson *v.* U. S. (9 Ct. Cls., 196), a much

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service required may be procured by open purchase or contract at the places and in the manner in which such articles are usually bought and sold or such services engaged between individuals. *Sec. 3709, R. S.*

1197. *Same—Supplies, etc., for executive departments.*—Hereafter all supplies of fuel, ice, stationery, and other miscellaneous supplies for the executive departments and other government establishments in Washington, when the public exigencies do not require the immediate delivery of the article, shall be advertised and contracted for by the Secretary of the Treasury, instead of by the several departments and establishments, upon such days as he may designate. There shall be a general supply committee in lieu of the board pro-

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more precise definition. It is clear ,however, that a subordinate officer charged with the duty of being the immediate representative of the United States in a contract or purchase should not, in general, venture to dispense with advertising, on the theory of the existence of a public exigency, in the absence of instructions or orders from a proper superior. Nor, on the other hand, will a superior officer, in entering into a contract for his command or branch of the service, properly assume that an "exigency" exists authorizing him to dispense with the statutory forms when the period is time of peace and no imperative necessity exists for the immediate delivery of the supplies or performance of the service supposed to be contracted for. It is to be noted that the cases both of Speed and Thompson related to contracts entered into during the Civil War. In the instructive opinions of the Attorney General on the "Fifteen per cent contracts" of April 27 and May 3, 1877 (XV Opin., 235, 253), it is held that the "exigency" contemplated by the statute can be one of time only, and that it can be regarded as existing only where an immediate delivery or performance is required by a public necessity. (Dig. Opin. J. A. G. (1912), note on p. 306.)

A military emergency can not be measured by precise rules. (Thompson *v.* U. S., 9 Ct. Cls., 187.) The act of March 2, 1861 (sec. 3709, R. S.), requires of a quartermaster that openness, diligence, prudence, and care which an individual might be supposed to exercise were he buying goods in just such an emergency and under just such circumstances. * * * A statute relating to national emergencies must necessarily be construed liberally, but a case under it can form no precedent for other cases. What was right for a quartermaster to do under certain circumstances can be lawful and right only when the precise circumstances are repeated. (Childs & Co. *v.* U. S., 4 Ct. Cls., 176.)

An officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without inviting competition will not justify that procedure and will not be given. (Par. 520, A. R., 1913.)

In the absence of any emergency in fact, or any declared by the head of the department in which a public work is being carried on, or any emergency that can be judicially inferred, the requirements of this section, in respect to advertisement, are mandatory, and a contract made in violation of it is void. (Schneider *v.* U. S., 19 Ct. Cls., 547, 551.)

Personal services are such as the individual employed or contracted with must perform, in person, directly under the control and supervision of an officer or agent of the Government, as distinguished from services the performance of which may be delegated by the contractor to others. (Par. 596, A. R., 1901.) They are contracts for expert or skilled service to be performed by the contractor in person. (Dig. Opin. J. A. G. (1912), 308D. See also 15 Op. Atty. Gen., 235, 253; 19 id., 96; 6 Comp. Dec., 314.)

Where the essential part of a contract is for personal services, advertising for proposals under section 3709, Revised Statutes, is not required. (2 Comp. Dec., 185.)

Section 3709 does not require the advertising for proposals, nor the entering into contracts for the purchase of patented or copyrighted articles where the benefit of competition can not be secured. (2 Comp. Dec., 632.)

See Dig. Opin. J. A. G. (1912), pages 306–312, as to exceptions to the rule requiring advertising.

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vided for in section thirty-seven hundred and nine of the Revised Statutes as amended, composed of officers, one from each such department, designated by the head thereof, the duties of which committee shall be to make, under the direction of the said Secretary, an annual schedule of required miscellaneous supplies, to standardize such supplies, eliminating all unnecessary grades and varieties, and to aid said Secretary in soliciting bids based upon formulas and specifications drawn up by such experts in the service of the Government as the committee may see fit to call upon, who shall render whatever assistance they may require. The committee shall aid said Secretary in securing the proper fulfillment of the contracts for such supplies, for which purpose the said Secretary shall prescribe, and all departments comply with, rules providing for such examination and tests of the articles received as may be necessary for such purpose; in making additions to the said schedule; in opening and considering the bids, and shall perform such other similar duties as he may assign to them: *Provided*, That the articles intended to be purchased in this manner are those in common use by or suitable to the ordinary needs of two or more such departments or establishments; but the said Secretary shall have discretion to amend the annual common supply schedule from time to time as to any articles that, in his judgment, can as well be thus purchased. In all cases only one bond for the proper performance of each contract shall be required, notwithstanding that supplies for more than one department or government establishment are included in such contract. Every purchase or drawing of such supplies from the contractor shall be immediately reported to said committee. No disbursing officer shall be a member of such committee. No department or establishment shall purchase or draw supplies from the common schedule through more than one office or bureau, except in case of detached bureaus or offices having field or outlying service, which may purchase directly from the contractor with the permission of the head of their department: *And provided further*, That telephone service, electric light, and power service purchased or contracted for from companies or individuals shall be so obtained by him.[1] *Sec. 4, Act of June 17, 1910 (36 Stat. 531).*

1198. *Same—Army supplies.*—Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the

[1] This paragraph amends section 3709 of the Revised Statutes, as amended by section 1 of the act of January 27, 1894 (28 Stat. 33), and April 21, 1894 (28 Stat. 62), and supersedes said amendments.

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interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe.[1] *Act of Mar. 2, 1901 (31 Stat. 905).*

1199. *Same—Period of advertising and award.*—That all purchases of said supplies, except in cases of emergency, which must be at once reported to the Secretary of War for his approval, shall be made by contract after public notice of not less than ten days for small amounts for immediate use, and of not less than from thirty to sixty days whenever, in the opinion of the Secretary of War, the circumstances of the case and conditions of the service shall warrant such extension of time. The award in every case shall be made to the lowest responsible bidder for the best and most suitable article, the right being reserved to reject any and all bids. *Act of July 5, 1884 (23 Stat. 109).*

1200. *Same—Open market purchases under $500.*—Hereafter the purchase of supplies and the procurement of services for all branches of the Army service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed five hundred dollars; but every such purchase exceeding one hundred dollars shall be promptly reported to the Secretary of War for approval, under such regulations as he may prescribe.[2] *Act of June 12, 1906 (34 Stat. 258).*

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[1] This enactment replaces the acts of February 27, 1893 (27 Stat. 483), August 6, 1894 (28 id., 233), March 15, 1898 (30 id., 322), and section 3729 of the Revised Statutes. For regulations governing open-market purchases see paragraphs 551–554, Army Regulations of 1913.

It has been held by the Attorney-General that "the object of this legislation is to secure for the Government the benefit of competition in obtaining supplies and to prevent favoritism in making the purchases thereof. It contemplates one general mode of purchase, namely, by contract, after advertisement, with 'the lowest responsible bidder for the best and most suitable article,' with but a single exception, and that is where an 'emergency' exists requiring the purchase to be otherwise made. Such emergency may arise not only before the required public notice can be given, but after it has once been given, in consequence of the failure to receive any bids or proposals; in either case the purchase thereupon would be an emergency purchase, and come within the requirements of the statute for an immediate report to the Secretary of War for his approval. This requirement is, I think, designed to extend to all purchases which are not made agreeably to the general mode above indicated, and hence it applies to the purchase of parts of machinery, or parts of stoves or ranges, for repairs, or of patented articles, when the same is (as in cases of emergency, and those only, it may be) made in open market." (18 Opin. Att. Gen., 349.)

[2] *Held*, that the authority to procure supplies of limited quantity "in the manner common among business men," not only gives authority to purchase without advertising, and also permits of the purchase without a written contract as required by sec. 3744, R. S., Dig. Op. J. A. G. (1912), p. 309, E. 4, p. 360, G. Also *held* that there was nothing in the act to justify construing the words "aggregate of the amount required" to require that the purchase should be limited to any particular period of time, as day, month, or year, or shall be limited to purchases made from a single firm, etc. "The aggregate should include all supplies which are properly grouped together in a single transaction, and which would be included in a single advertisement for bids, if adver-

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1201. *Same—In newspapers.*—No advertisement, notice, or proposal for any Executive Department of the Government, or for any bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority.[1] *Sec. 3828, R. S.*

1202. *Same—Rates.*—Hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals,[2] with the usual discounts; such rates to be ascertained from

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tisement were resorted to. Purchases arising from the same need of the same articles of subsistence stores should not be made more frequently than the necessities of the service require, so as to limit the aggregate in each case to $500, and supplies which are usually purchased together should not be divided simply for the purpose of avoiding advertising for the same. If the character of the supplies is such that good administration would require their purchase in quantities sufficient to last a month, purchases should not be made weekly or daily for the purpose of bringing the amount within the limit authorized for open-market purchases. Subject to the above considerations, the matter is one depending upon the sound discretion of the purchasing officer." (C. 28931, Sept. 2, 1911.)

[1] The requirements of section 3828, Revised Statutes, extend to all officers connected with any executive department, no matter where situated, and not merely to those at the seat of Government. (16 Opin. Atty. Gen., 616.) They are complied with by the issue of a general circular of instructions, and it is not necessary to file authority with each particular bill. (Comp. Dec., 1893–94, 103; U. S. *v.* Odeneal, 10 Fed. Rep., 616; 13 Comp. Dec., 446.) The written authority must precede the publication. A subsequent approval or ratification will not be sufficient. (5 Comp. Dec., 167; 14 id., 747.)

When advertising in connection with the purchase of subsistence supplies for the Army is, by law, a necessary condition precedent to the purchase of such supplies, and there is no specific appropriation for such advertising, the cost thereof is properly chargeable to the appropriation "Subsistence of the Army." (3 Dig. Comp. Dec., 23.)

Under section 3709 of the Revised Statutes and paragraph 1486 of the Army Regulations (1881) the length of time for the publication of advertisements inviting proposals for furnishing Army supplies was left somewhat to the discretion of the purchasing officer. But the act of July 5, 1884 (23 Stat. 109), has fixed, in all cases excepting emergency purchases, the minimum period during which public notice shall be given, authorizing the purchase of "small amounts for immediate use" after public notice of not less than ten days, while all other purchases are required to be made after public notice of not less than thirty days. (Id., 23.)

Under the Army Regulations, advertisement may be made by handbills; but when this method is resorted to it must be shown that the handbills were circulated to such an extent as to render it probable that a large number of persons engaged in the business of furnishing the articles desired had thus been afforded an opportunity to compete for the contract which was to be let. (Id., 24. See also 3 Comp. Dec., 730.)

The subject of advertising in the War Department and its several bureaus and offices, and in the Military Establishment generally, is regulated by the provisions of paragraphs 499–509, Army Regulations of 1913.

[2] A disbursing officer is not authorized to pay bills for newspaper advertising when he is satisfied that the price exceeds the commercial rates charged to private individuals, with the usual discounts, notwithstanding the affidavit of the proprietor of the newspaper to the contrary. (1 Comp. Dec., 312.)

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sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: *Provided*, That all advertising in newspapers since the tenth day of April, eighteen hundred and seventy-seven, shall be audited and paid at like rates; but the heads of the several departments may secure lower terms at special rates whenever the public interest requires it. *Act of June 20, 1878 (20 Stat. 216)*.

1203. *Same—In District of Columbia—Limitations.*—All executive proclamations, and all treaties required by law to be published, shall be published in only one newspaper, the same to be printed and published in the District of Columbia and to be designated by the Secretary of State and in no case of advertisement for contracts for the public service shall the same be published in any newspaper published and printed in the District of Columbia unless the supplies or labor covered by such advertisement are to be furnished or performed in said District of Columbia. *Act of July 31, 1876 (19 Stat. 105)*.

1204. *Same—Rates in District of Columbia.*—All advertising required by existing laws to be done in the District of Columbia by any of the departments of the Government shall be given to one daily and one weekly newspaper of each of the two principal political parties and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes. *Act of Jan. 21, 1881 (21 Stat. 317)*.

1205. *Same—On Pacific coast.*—The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon. *See 3716, R. S.*

PROPOSALS—BIDDERS' BONDS.

1206. *Secretary of War to prescribe rules, etc.*—The Secretary of War is hereby authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for

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contracts under the War Department.[1] *Act of Apr. 10, 1878 (20 Stat. 36).*

1207. *Bidders' bonds.*—He may require every bid to be accompanied by a written guaranty, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of War or the officer authorized to make a contract in the premises, give bond, with good and sufficient sureties, to furnish the supplies proposed or to perform the service required. If after the acceptance of a bid and a notification thereof to the bidder he fails within the time prescribed by the Secretary of War or other duly authorized officer to enter into a contract and furnish a bond with good and sufficient security for the proper fulfillment of its terms, the Secretary or other authorized officer shall proceed to contract with some other person to furnish the supplies or perform the service required, and shall forthwith cause the difference between the amount specified by the bidder in default in the proposal and the amount for which he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal to be charged up against the bidder and his guarantor or guarantors, and the sum may be immediately recovered by the United States for the use of the War Department in an action of debt against either or all of such persons.[2] *Act of Mar. 3, 1883 (22 Stat. 488).*

1208. *Opening bids.*—Whenever proposals for supplies have been solicited, the parties responding to such solicitations shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made. *Sec. 3710, R. S.*

1209. *Separate proposals and contracts.*—Whenever the Secretary of War invites proposals for any works, or for any material or labor for works, there shall be separate proposals and separate contracts for each work, and also for each class of material or labor for each work. *Sec. 3717, R. S.*

1210. *River and Harbor improvements in same region.*—Nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract where such works are situated in the same region and of the same kind or character. *Sec. 2, Act of Sept. 19, 1890 (26 Stat. 452).*

[1] For regulations prepared by the Secretary of War under the authority conferred by this statute, see paragraphs 522–549 Army Regulations of 1913.

[2] For requirements of regulations in respect to guaranties or certified checks in support of bids and proposals, see paragraphs 535–537, Army Regulations of 1913; and for terms of guaranty and decisions and opinions regarding same, see Dig. Opin. J. A. G. (1912), notes on pages 335 and 336.

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WRITTEN CONTRACTS[1]—RETURNS OFFICE.

1211. *Formal written contracts—Returns office.*—It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof;[2] a copy of which shall be filed by the officer

[1] For instructions respecting the preparation and execution of contracts, see paragraphs 555–565, Army Regulations of 1913.

[2] It may be considered as settled that so much of section 3744 as provides that all contracts shall "be reduced to writing and signed by the contracting parties with their names at the end thereof" is mandatory, and contracts which do not comply with its requirements are void. In looking at the scope and purpose of this law and at the words in which it is couched, I can not doubt of the intention of Congress in its enactment. To my mind it is clear that it was designed to require every executory contract, at least, to be put in writing, so that its terms might not be mistaken and that the character and extent of the outstanding engagements of the United States might at all times be known to the executive and legislative departments, or be capable of being ascertained in a reasonable time and with appropriate exactitude. (Henderson *v.* U. S., 4 Ct. Cls., 75, 83.) There is no class of cases in which a statute for preventing frauds and perjuries is more needed than in this. And we think that the statute in question was intended to operate as such. It makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. (Clark *v.* U. S., 95 U. S., 539, 542; South Boston Iron Co. *v.* U. S., 18 Ct. Cls., 165, 176; U. S. *v.* Lamont, 2 D. C. App., 532.) The provisions of this section apply to contracts made in emergencies. (Cobb et al. *v.* U. S., 18 Ct. Cls., 514, 532; Clark *v.* U. S., 95 U. S., 539.) Offers and acceptances by letter are preliminary memoranda only and do not constitute a valid contract within the meaning of the statute. (South Boston Iron Co. *v.* U. S., 118 U. S., 37, 42.) Where, however, a parol contract has been partly executed, the party performing will be entitled to recover the fair value of his property or services as upon an implied contract for a *quantum meruit*. (Clark *v.* U. S., 95 U. S., 539.) See also Warren & Goss *v.* U. S., 23 Ct. Cls., 77; South Boston Iron Co. *v.* U. S., 18 id., 165, and 118 U. S., 37; Clark *v.* U. S., 95 U. S., 543; The International contracting Co. *v.* Lamont, 2 Ct. App. D. C., 532. See also Lindsley *v.* U. S., 4 Ct. Cls., 359; Burchiel *v.* U. S., 4 Ct. Cls., 549; Bernheimer *v.* U. S., 5 Ct. Cls., 65.) The formal execution of contracts for Government work, as a prerequisite for their legality and binding effect, after the acceptance of proposals, as required by section 3744, Revised Statutes, was not dispensed with by the acts of March 23, 1883 (22 3tat. 488), and section 3 of the act of August 11, 1888 (25 Stat. 400, 423). U. S. *v.* Lamont, 2 D. C. App., 532.

In St. Louis Hay & Grain Co. *v.* United States (191 U. S., 163) it was held that after performance of a contract not meeting the requirement of the statute recovery may be had for the amount agreed upon, notwithstanding the fact that the instrument itself was void as an executory contract. In the opinion of the court it was said:

"The invalidity of the contract is immaterial after it has been performed. When a lawful transfer of property is executed, it does not matter whether the terms of the execution were void or valid while executory, the transfer can not be revoked or the terms changed. A promise to make a gift does not bind, but a gift can not be taken back, and a transfer in pursuance of mutual promise is not made less effectual by those promises or by the fact that money was received in exchange. The contract may be void as such, but it expresses the terms on which the parties, respectively, paid their money and delivered their goods."

(See, to the same effect, U. S. *v.* Andrews, 207 U. S., 229; 14th Comp. Dec., 594.) See also, 15th *idem*, pages 65 and 89, where it was held on the authority of the decision of the Supreme Court that when informal contracts by proposal

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making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.[1] *Sec. 3744, R. S.*

1212. *Oath to return.*—It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths:[2] "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided." *Sec. 3745, R. S.*

1213. *Penalty for omitting return.*—Every officer who makes any contract, and fails or neglects to make return of the same, according

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and acceptance have been executed with the exception that the price has not been paid, the contractor is entitled to be paid the full contract price although the price be in excess of the current price at the time and place of delivery.

If there is an exigency or emergency requiring immediate delivery of property or immediate rendition of services a written contract is not necessary. (9 Comp. Dec., 460; 15 Comp. Dec., 65; 36 Ct. Cls., 105; 42 Ct. Cls., 351; par. 550, A. R. 1913.) See also Ceballos *v.* U. S. (42 Ct. Cls., 318), as to emergency contracts in time of war.

The time fixed in an existing written contract for the completion of the same may be orally waived—that is, extended indefinitely—and the written contract will continue in force, with a reasonable time for performance. (8 Comp. Dec., 104.) But if it is desired to extend the time to a specific date, section 3744, Revised Statutes, applies, and the extension should be accomplished by a formal written contract. (8 Comp. Dec., 104.)

A written contract is not necessary in expending the sum of $50,000,000 appropriated in 1898 (30 Stat. 273) for national defense, which was "to be expended at the discretion of the President." (9 Comp. Dec., 457.)

The act of June 25, 1910 (36 Stat. 676), provides that "the requirements of section thirty-seven hundred and forty-four of the Revised Statutes shall not apply to the lease of lands, or easements therein, or of buildings, rooms, wharves, or rights of wharfage or dockage, or to the hire of vessels, boats, and other floating craft, for use in connection with river and harbor improvements, where the period of any such lease or hire is not to exceed three months."

[1] It is proper to remark that in the event of a suit being instituted against a principal or surety on a contract of the United States, the copy of the contract filed in the Returns Office would have no evidential value, and a copy of the original filed in the office of the Comptroller of the Treasury under the provisions of section 3743, Revised Statutes, paragraph 1216, *supra*, would have to be produced subject to the authentication required in section 886 of the Revised Statutes.

[2] This oath may be taken before an officer authorized to administer oaths for "purposes of military administration," etc., by act of July 27, 1892 (27 Stat. 278). (Dig. Opin. J. A. G. (1912), p. 361.)

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to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months. *Sec. 3746, R. S.*

1214. *Instructions regarding return.*—It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.[1] *Sec. 3747, R. S.*

1215. *Stipulation that no member of Congress has interest.*—In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of, [or Delegate to,] Congress [or Resident Commissioner] shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.[2] *Sec. 3741, R. S.*

1216. *Contracts to be filed with auditors.*—All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.[3] *Sec. 3743, R. S., as amended by Act of July 31, 1894 (28 Stat. 210).*

BONDS TO SECURE PAYMENT FOR LABOR AND MATERIALS.

1217. *Same.*—Hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall

[1] For requirements of regulations in respect to the furnishing of contracts, and papers pertaining thereto, to the Returns Office of the Interior Department, see pars. 555–565. A. R., 1913.

[2] See sec. 114, U. S. Criminal Code (35 Stat. 1109).

[3] All formal written contracts connected with the settlement of public accounts should be placed, and should remain, on file in the offices designated by law as their proper depositories. (3 Dig. 2d Comp. Dec., 112.)

This statutory requirement includes not only all formal written contracts or specialties in any manner connected with the settlement of accounts, but also all properly authorized extensions or other modifications of such contracts, every modification of a contract being in the nature of a new contract and connected with the settlement of accounts. (Id., 112.)

Only formal written contracts are required under section 3743 of the Revised Statutes as amended to be filed. Informal contracts and the papers pertaining

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be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the Department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: *Provided*, That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: *And pro-*

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thereto should be filed with the accounts or vouchers to which they relate in order to facilitate the examination and revision of accounts and vouchers. (Id., 109.)

A separate notification is required in each case of extension of a contract, so that it can be filed, with the contract to which it pertains. Otherwise notifications of extensions of contracts will fail of the purpose contemplated in section 3743 of the Revised Statutes. (Id., 112.)

Formal written contracts made and filed in the proper office in pursuance of law must be regarded as necessary in the settlement of public accounts or claims, and therefore can not properly be returned either for cancellation or amendment. (Id.)

See paragraphs 569–581, A. R. of 1913, for provisions relating to contractor's bonds. Also Dig. Opin. J. A. G. (1912), pp. 205, 206, and 212–215.

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vided further, That where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: *Provided further*, That in all suits instituted under the provisions of this Act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor.[1] *Act of Aug. 13, 1894 (28 Stat. 278), as amended by Act of Feb. 24, 1905 (33 Stat. 812).*

[1] 1. This paragraph supersedes the act of August 13, 1894 (28 Stat. 278). The bond which is provided for by the original statute was held to be "intended to perform a double function: In the first place, to secure to the Government, as before, the faithful performance of all obligations which the contractor might assume toward it; and in the second place to protect third persons from whom the contractor obtained materials or labor." (U. S. *v.* National Surety Co., 92 Fed. Rep., 549; U. S. *v.* Rundle, 100 Fed. Rep., 400.) The statute does not create an additional obligation on the part of the United States toward the surety in the nature of an equitable lien or other right. The United States has no right to withhold any funds due a contractor for the purpose of indemnifying the surety for monies paid out by him to material men and laborers. (3 Comp. Dec., 708; 15 *id.*, 711; 16 *id.*, 426.)

Held by the Attorney General (23 Opin., 174) that the act does not refer to contracts for the construction of a naval vessel, *where the whole title remains in the contractor until its completion and acceptance by the Government.* (See also 26 Opin. Atty. Gen., 30.) Where, however, the contract for the construction of a vessel provides for the title to pass as payments are made the act applies. (Title Guaranty & Trust Co. *v.* Crane Co., 219 U. S., 24. See also U. S. *v.* Ansonia Brass & Copper Co., 218 U. S., 452.)

2. The statute protects persons furnishing labor and materials to subcontractors as well as to the original contractor. (U. S. *v.* American Surety Co., 200 U. S., 197.) But it does not include the claims of a railroad company for freight due on materials which are loaded and unloaded by the contractor, such charges being neither labor nor materials within the meaning and purpose of the act. (U. S. *v.* Hyatt, 92 Fed Rep., 442.) Nor does it include the purchase or repair of the contractor's plant. (U. S. *v.* Morgan, 111 *id.*, 474.) A Government contractor for public work, who has given a bond conditioned that he will "make full payment to all persons supplying him with labor and materials" is not liable thereunder for wages due from a subcontractor who has supplied him with materials when he paid such contractor in full therefor. (U. S. *v.* Farley et al., 91 *id.*, 474.)

3. The bond provided for by the statute is regarded as in effect two obligations, one to the United States to secure the due performance of the contract;

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THE EIGHT-HOUR LAW.

1218. *Eight hours to be a day's work.*—Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the United States.[1] *Sec. 3738 R. S.*

1219. *Same—Contractors on public works—Emergencies.*—That the service and employment of all laborers and mechanics[2] who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or sub-

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and the other to the United States, but in behalf of labor and material men, to secure their payment; and the obligation for the benefit of the labor and material men is not released by the action of the contractor and the United States in modifying the contract without the surety's assent. (See Conn. *v.* State, 125 Ind., 514; 46 Nebr., 644; 41 *id.*, 655; 40 Minn., 27; U. S. *v.* Rundle, 100 Fed. Rep., 400; U. S. *v.* National Surety Co., 92 *id.*, 549; U. S. *v.* American Bonding Co., 89 *id.*, 921; U. S. Fidelity, etc., Co. *v.* Golden Pressed Brick Co., 191 U. S., 416. See also Dig. Opin. J. A. G. (1912), pp. 370, 371.)

[1] Congress has power to regulate the hours of labor which may be required or permitted on public works of the United States, though such work may be carried on within the territorial jurisdiction of a State. (U. S. *v.* San Francisco Bridge Co., 88 Fed. Rep., 891.) The eight-hour law does not establish an inflexible rule for the payment of wages. Its intent is not to increase wages, but to elevate the condition of laboring men by diminishing their hours of labor. (Averill *v.* U. S., 14 Ct. Cls., 200.) To elevate the condition of laboring men by diminishing their hours of labor is not the only object of the law. It is strongly contended that an eight-hour day inures to the advantage of the employer, as the superior workmanship of the eight-hour day more than compensates for the shorter day. Both views should be taken into consideration in questions involving construction of the eight-hour statutes.

The original statute on this subject—the act of June 25, 1868, incorporated in section 3738 Revised Statutes, merely provided that eight hours should "constitute a day's work" for laborers, etc., employed by the United States. It was held by the Supreme Court (U. S. *v.* Martin, 94 U. S., 400, Oct., 1876) that this enactment was merely "a direction by the Government to its agents" not "a contract between the Government and its laborers, that eight hours shall constitute a day's work," and that it did not prevent the Government from making agreements with them by which their labor may be more (or less) than eight hours a day. The act thus failed of its apparent object. To cure this defect the act of August 1, 1892, was passed. And to extend the law generally to public contracts the act of June 19, 1912, was passed.

[2] What constitutes a laborer or mechanic within the meaning of the statute must be determined by the facts arising in any particular case. Inquiry having been made of the War Department by certain contractors whether the men employed on dredges, scows, and tugs on Lake Erie, under contracts with the United States, were not to be regarded as excepted from the application of the act of 1892, *held* that it was not the duty or province of this department to determine such questions, but the same were for the courts to decide, on trials under the second section of the act, of persons charged with violations of its provisions. Neither this or other departments of the Government can lay down rules or make constructions of the law for contractors which would effectually protect them were they brought to trial. (Dig. Op. J. A. G., IV., 591.) In reply to a communication from the Secretary of War, August 29, 1892, the Attorney General, whose opinion had been asked with regard to the application in general of the eight-hour law to the construction of levees in the Mississippi River, declined to give an official opinion with a view to the guidance of persons who may propose to enter in contract relations with the United States in absence of a specific case requiring the action of the Secretary. (20 Opin. Atty. Gen., 465.)

Held, that the term "laborer," as used in the act of 1892, was apparently intended in a comprehensive sense, and that to declare certain classes of employment as "peculiar," and therefore excepted from the operation of the act, would be a restriction not warranted by the language of the statute. Thus a proposed regulation excepting "watchmen, messengers, teamsters, engineers,

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contractor upon any of the public works[1] of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work

firemen, seamen," and some others, was not included in the description "laborers and mechanics" not recommended to be adopted. (Dig. Op. J. A. G., 381, par. 4, Ed. 1895.) In replying to a communication from the Secretary of War, August 27, 1892, the Attorney General, whose opinion had been asked as to whether the term "laborers and mechanics" in the statute included teamsters, watchmen, engineers, and firemen employed in the public service of the War Department, and all engineers, firemen, deckhands, mates, and seamen on Government vessels, replied that as to particular employees the answer depended upon matters of fact not stated and not within his cognizance. If the employees named are ordinary laborers or mechanics, working for the Government for wages under ordinary conditions, the statute would seem to apply. At the same time it is quite apparent that, as to some of them, it might frequently happen that they would be within the emergency exception named in the statute, and as to others, as, for instance, sailors or others on shipboard, or teamsters, their employment being peculiar, they might well be held to be, as a matter of fact, neither laborers nor mechanics within the meaning of this law. (20 Op. Atty. Gen., 463.) Under the order of the President of September 11, 1907, directing that all persons employed as watchmen, lock tenders, lock employees, etc. (see par. 731, A. R., 1913), shall "be considered as covered by the eight-hour law, and that exceptions only be made by the Secretary himself on the case being reported to him," *held* that exceptions were only intended to be made in case of emergency or where, owing to the nature of the duties of the particular employee, he should not be regarded as within the President's order or as a laborer or mechanic within the meaning of the law. (Dig. Op. J. A. G., V., 592.) In Ellis *v.* United States (206 U. S., 260), in passing upon the question whether persons employed on dredges and scows in dredging a channel in a harbor were laborers or mechanics the court states: "As in other cases where a broad distinction is admitted, it ultimately becomes necessary to draw a line, and the determination of the precise place of that line in nice cases always seems somewhat technical, but still the line must be drawn." (For decisions as to laborers and mechanics see Dig. Op. J. A. G., Eight-hour law.)

[1] The act of August 1, 1892, is of general application, and the limitation as to public works in said act applies only to such persons as are in the employ of contractors and subcontractors. (20 Op. Atty. Gen., 459.)

Undoubtedly "public works" is a phrase of rather wide signification, and it has not been precisely and fully defined. (26 Op. Atty. Gen., 33.) The term "public works of the United States" should not be narrowly construed. (20 Op. Atty. Gen., 459.) *Held* not to apply to construction of naval vessels under contract. (26 Op. Atty. Gen., 33.) But the naval appropriation acts subsequent to that opinion and prior to the act of June 19, 1912, required eight-hour days. The act of June 19, 1912, extends to construction of naval vessels. (See also U. S. *v.* Ansonia Brass & Copper Co., 218 U. S., 452.) *Held* that the construction of levees on the banks of the Mississippi River, in accordance with the plans of the Mississippi River Commission, was a public work of the United States in the sense of the act of August 1, 1892, although the United States did not own the land. A proprietorship in or jurisdiction over the thing constructed is not necessary. The United States expends annually more than twenty millions for the improvement of rivers and harbors, but the greater part of this is done without acquiring title or jurisdiction to or over the premises. The question under the act is not in whom is the title or jurisdiction, but who is doing the work. The construction of these levees is a particular work appropriated for by Congress and to be contracted for by the United States. It is therefore one of the public works of the United States and subject to the provisions of this statute. (Dig. Op. J. A. G., 590, II.) But see river and harbor appropriation acts 1911 and 1912, post.

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more than eight hours in any calendar day except in case of extraordinary emergency.[1] *Sec. 1, Act of Aug. 1, 1892 (27 Stat. 340).*

1220. *Same—Penalty.*—That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof. *Sec. 2, id.*

1221. *Same—Present contracts not affected.*—The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act. *Sec. 3, id.*

1222. *Same—Contract for withholding penalty.*—That every contract hereafter made to which the United States, any Territory, or the District of Columbia is a party, and every such contract made for or on behalf of the United States, or any Territory, or said District,

[1] The term "extraordinary emergency," employed in the first section of the act of August 1, 1892, can not properly be construed in advance as referring or applicable to any particular class of cases. The question whether there is or was such emergency should be left to be determined by the facts of each special instance as it arises. A case in which it appeared a compliance with the statute was not possible might well be held to be one of "extraordinary emergency." (Dig. Op. J. A. G., V., 592.) No provision is contained in the act of August 1, 1892, for the suspension of its operation, and the Secretary of War has no power to suspend it as to certain work or places of work on the theory that an "emergency" exists as to the same. Nor can he lay down in advance any general rule as to what would be such an emergency as would relieve an officer or contractor from liability or give him an immunity from prosecution. The question of an existence of an emergency is to be determined, in the first instance, by the person carrying on or in charge of the work; and, in the second by the court, if the case comes before one. It may be said generally that when the emergency can be foreseen it is not extraordinary. (Dig. Op., 592, VI.)

An extraordinary emergency is something unforeseen, sudden, unexpected, which would call for immediate action or remedy; the contractor may require or permit laborers and mechanics to work more than eight hours in a calendar day to protect the work from injury and destruction threatened by an extraordinary emergency, but may not do so to repair losses caused thereby. When the emergency passes the privilege ceases. The language extraordinary emergency can not contemplate conditions of danger which necessarily inhere in the work to be done, and which will always be present from the beginning to the end of the work. (149 Fed. Rep., 814.)

A delay, not entirely unexpected, in obtaining the timber required for the construction of a pier at the Boston Navy Yard does not create an extraordinary emergency within the meaning of the law. No mere requirement of business convenience or pecuniary advantage is an extraordinary emergency within the meaning of the act. (206 U. S., 246.)

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which may require or involve the employment of laborers or mechanics shall contain a provision that no laborer or mechanic doing any part of the work contemplated by the contract [1] in the employ of the contractor or any subcontractor [2] contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work; and every such contract shall stipulate a penalty for each violation of such provision in such contract of five dollars for each laborer or mechanic for every calendar day in which he shall be required or permitted to labor more than eight hours upon said work; and any officer or person designated as inspector of the work to be performed under any such contract, or to aid in enforcing the fulfillment thereof, shall, upon observation or investigation, forthwith report to the proper officer of the United States, or of any Territory, or of the District of Columbia, all violations of the provisions of this Act directed to be made in every such contract, together with the name of each laborer or mechanic who has been required or permitted to labor in violation of such stipulation and the day of such violation, and the amount of the penalties imposed according to the stipulation in any such contract shall be directed to be withheld for the use and benefit of the United States, the District of Columbia, or the Territory contracting by the officer or person whose duty it shall be to approve the payment of the moneys due under such contract, whether the violation of the provisions of such contract is by the contractor or any subcontractor. Any contractor or subcontractor aggrieved by the withholding of any penalty as hereinbefore provided shall have the right within six months thereafter to appeal to the head of the department making the contract on behalf of the United States or the Territory, and in the case of a contract made by the District of Columbia to the Commissioners thereof, who shall have power to review the action imposing the penalty, and in all such appeals from such final order whereby a contractor or subcontractor may be aggrieved by the imposition of the penalty hereinbefore provided such contractor or subcontractor may within six months after decision by such head of a department or the Commissioners of the District of Columbia file a claim in the Court of

[1] The eight-hour work-day restriction applies only to work contemplated by the contract. The words "work contemplated by the contract" include the work directly and proximately in view in the contract as specifically appropriated to and destined for the Government use. Contracts for the purchase of projectiles are not excepted from the operation of the eight-hour restriction, but only the work done in assembling the parts, treating the forging or casting, and machining the projectiles would be "work contemplated by the contract," unless the casting and other parts were manufactured solely and exclusively for the purpose of making the projectiles. (29 Op. Atty. Gen., 534.)

[2] The eight-hour work-day restriction applies to the employment of labor on the work contemplated by the contract, and it is immaterial by whom the labor is employed, whether by contractor, or subcontractor, or subsubcontractor. (29 Op. Atty. Gen., 534.)

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Claims, which shall have jurisdiction to hear and decide the matter in like manner as in other cases before said court. *Sec. 1, Act of June 19, 1912 (37 Stat. 137).*

1223. *Same—Exceptions.*—That nothing in this Act shall apply to contracts for transportation by land or water, or for the transmission of intelligence, or for the purchase of supplies by the Government, whether manufactured to conform to particular specifications or not, or for such materials or articles as may usually be bought in open market,[1] except armor and armor plate, whether made to conform to particular specifications or not, or to the construction or repair of levees or revetments[2] necessary for protection against floods or overflows on the navigable waters of the United States: *Provided*, That all classes of work which have been, are now, or may hereafter be performed by the Government shall, when done by contract, by individuals, firms, or corporations for or on behalf of the United States or any of the Territories or the District of Columbia, be performed in accordance with the terms and provisions of section one of this Act.[3] The President, by Executive order, may waive the provisions and stipulations in this Act as to any specific contract or contracts during time of war or a time when war is imminent, and until January first, nineteen hundred and fifteen, as to any contract or contracts entered into in connection with the construction of the Isthmian Canal. No penalties shall be imposed for any violation of such provision in such contract due to any extraordinary events or conditions of manufacture, or to any emergency caused by fire, famine, or flood, by danger to life or to property, or by other extraordinary event or condition on account of which the President shall subsequently declare the violation to have been excusable. Nothing in this Act shall be construed to repeal or

[1] The word "supplies" and the phrase "such materials or articles as may usually be bought in the open market" are practically synonymous and cover things which are had in store or stock. Whether a particular article or material falls within this exception to the eight-hour provision is generally a matter of administration. (29 Op. Atty. Gen., 534.)

Any article or material which can fairly be said to be included, in its ordinary condition, within the class of supplies or articles which may usually be bought in open market, is excepted from the operation of the act, no matter if it may differ in particulars from other members of the class by reason of the requirements of the specifications under which it is contracted for. For instance, paper, in its ordinary state, evidently belongs to the class of "supplies" and it is not withdrawn therefrom because manufactured according to the standard of quality fixed upon by the Joint Committee on Printing. (29 Op. Atty. Gen., 639.

[2] This renders unnecessary the incorporation hereafter into annual river and harbor appropriation acts, words excepting the work on Mississippi River levees from the eight-hour law as far as contracts are concerned.

[3] Looking at the act of June 19, 1912, it will be seen that section 1 lays down the rule which is to govern all contracts hereafter entered into by the United States, or on its behalf, and prescribes the penalty for a violation of its requirements and the mode of redress when the penalty is unjustly exacted, while section 2 states the exceptions to the rule and the qualifications and

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modify the Act entitled "An Act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," being chapter three hundred and fifty-two of the laws of the Fifty-second Congress, approved August first, eighteen hundred and ninety-two, as modified by the Acts of Congress approved February twenty-seventh, nineteen hundred and six, and June thirtieth, nineteen hundred and six, or apply to contracts which have been or may be entered into under the provisions of appropriation Acts approved prior to the passage of this Act. *Sec. 2, id., 138.*

1224. *Same—When effective.*—That this Act shall become effective and be in force on and after January first, nineteen hundred and thirteen. *Id.*

1225. *Same—Canal Zone.*—The provisions of the Act entitled "An Act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, shall not apply to alien laborers employed in the construction of the Isthmian Canal within the Canal Zone.[1] *Act of Feb. 27, 1906 (34 Stat. 33).*

1226. *Same.*—The provisions of an Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, and of an Act entitled "An Act making

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limitations thereof. The main exceptions are found in the first sentence of section 2. But to these exceptions there is attached a proviso, the effect of which is to limit and narrow the exceptions. This proviso might be so construed as to nullify, in whole or in part, portion of the act to which it is attached. The purpose of the proviso, however, is merely to qualify or limit the part of the enactment to which it is attached and not to nullify or destroy it. The Attorney General therefore ruled that to carry out the intent of the proviso, the words, "which have been, are now, or may hereafter be performed by the Government," can not be taken literally, but must be construed as referring to work which, up to the time of the making of the contract therefor has ordinarily been performed by the Government, and not merely occasionally or to a limited extent, so that to let the same upon contract would indicate an intention to evade the eight-hour restriction of the act of August 2, 1892. To illustrate: In view of your statement that "the War Department has from time to time engaged in the manufacture of clothing, tentage, and various equipments for the Army on its own account, using materials purchased for the purpose, but as a general rule the Government awards contracts for the manufacture of clothing, furnishing material therefor," I should say that, under the circumstances stated, the eight-hour restriction need not be incorporated in contracts for such clothing. (29 Op. Atty. Gen., 511.)

But as to smokeless powder, in view of the fact that the Government manufactures about 30 per cent of the amount in use, it could not be considered that the Government occasionally or to a limited extent had performed such work; so contracts for the purchase of this class of powder must fall under the eight-hour law. (29 Op. Atty. Gen., 546.)

[1] See par. 1223, as to contracts respecting the Canal Zone under the act of June 19, 1912.

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appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and six, and for prior years, and for other purposes," approved February twenty-seventh, nineteen hundred and six, shall not apply to unskilled alien laborers and to the foremen and superintendents of such laborers employed in the construction of the Isthmian Canal within the Canal Zone.[1] *Sec. 4, Act of June 30, 1906 (34 Stat. 669).*

1227. *Mississippi River levee work.*—Improving Mississippi River from Head of Passes to the mouth of the Ohio River, including salaries, clerical, office, traveling, and miscellaneous expenses of the Mississippi River Commission: Continuing improvement with a view to securing a permanent channel depth of nine feet, six million dollars, which sum shall be expended under the direction of the Secretary of War in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for the general improvement of the river, for the building of levees, which shall be considered extraordinary emergency work, between the Head of Passes and Cape Girardeau, Missouri, and for surveys, including the survey from the Head of Passes to the headwaters of the river, in such manner as in their opinion shall best improve navigation and promote the interests of commerce at all stages of the river.[2] *Act of July 25, 1912 (37 Stat. 218).*

1228. *Annual naval appropriation act.*—And the contract for the construction of said vessels shall contain a provision requiring such vessels to be built in accordance with the provisions of an Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August 1, 1892.[3] *Act of June 24, 1910 (36 Stat. 628, Annual naval appropriation act).*

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[1] See ante, 1223, as to contracts respecting the Canal Zone under the act of June 19, 1912.

[2] In U. S. v. Garbish (222 U. S., 261, Oct., 1911) it was held that the building and repair of levees on the Mississippi River is one of the most important and conspicuous of the public works of the United States, and if it had been intended to exempt it from the provision of the act of August 1, 1892, which declared a public policy in regard to labor, it would have been expressed. Since that decision the annual appropriation act of rivers and harbors have specially exempted levee construction to the extent as stated in the acts. See annual appropriation act, March 4, 1913 (37 Stat. 817). The act of June 19, 1912 (37 Stat. 137), paragraph 1223, post, especially excepts contracts for the construction of levees and revetments on navigable waters from the eight-hour restriction.

[3] The act of August 1, 1892 (1219, ante), does not apply to vessels under construction for the Navy by contract with builders at private establishments. Materials for such vessels, such as armor, guns, and other articles obtained under special contract, are a fortori, not within the statute. (26 Op. Atty. Gen., 30.) This decision was given August 3, 1906. The annual naval appropriation acts above quoted place the contracts entered into under authority of those acts within the eight-hour law. (See also U. S. *v.* Ansonia Brass & Copper Co., 218 U. S., 452.)

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1229. *Same.—Provided*, That no part of this appropriation shall be expended for the construction of any boat by any person, firm, or corporation which has not at the time of the commencement and during the construction of said vessel established an eight-hour work day for all employees, laborers, and mechanics engaged in doing the work for which this appropriation is made.[1] *Act of Mar. 4, 1911 (36 Stat. 1288, Annual naval appropriation act).*

1230. *Same.*—The Act entitled, "An Act limiting the hours of daily service of laborers and mechanics employed upon work done for the United States, or for any Territory or for the District of Columbia, and for other purposes," approved June nineteenth, nineteen hundred and twelve, shall be in force as to all contracts authorized by this Act from and after the passage of this Act.[2] *Act of August 22, 1912 (37 Stat. 355, Annual naval appropriation act).*

1231. *Fortification Act.*—For the purchase, manufacture, and test of mountain, field, and siege cannon, including their carriages, sights, implements, equipment, and the machinery necessary for their manufacture at the arsenals, three hundred thousand dollars: *Provided*, That no part of this appropriation shall be expended for the purchase of any mountain, field, or siege cannon, including their carriages, from any person, firm, or corporation which has not at the time of commencement of said works established an eight hour workday for all employees, laborers, and mechanics engaged or to be engaged in the work of construction of the cannon named herein:[3] *Provided*, That the Chief of Ordnance, United States Army, is hereby authorized to enter into contracts or otherwise, incur obligations for the purposes above mentioned not to exceed three hundred thousand dollars, in addition to the appropriations herein and heretofore made.

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[1] This applied to torpedo boats. Practically the same language was used as to submarine torpedo boats in the same act, page 1287. The limitation clause in the act of March 4, 1911 (36 Stat. 1287), providing that "no part of this appropriation shall be expended for the construction of any boat by any person, firm, or corporation which has not at the time of the commencement and construction of said vessel established an eight hour working day for all employees * * * engaged or to be engaged in the construction of the vessel," applies to employees, laborers, etc., engaged or to be engaged in the construction of such vessel, of the firm or corporation to whom the contract is let, and is limited to such employees, etc., as are in the employ of such contractor and not to employees of other persons, firms, etc., who in the usual course of business may furnish to such contractor materials entering into the construction of said vessel. (18 Comp., 93.)

[2] The act of June 19, 1912, did not take effect till January 1, 1913. The naval appropriation act for the fiscal year ending June 30, 1913, as quoted, shows the intent of Congress that the act of June 19, 1912, should apply at once to contracts under the Naval appropriation act.

[3] This act is not repealed by the act of June 19, 1912. The provisions of this act relative to the eight hour law applies only to employees, laborers, and mechanics engaged in the work of manufacturing the ammunition named therein, and does not establish any general rule governing the employees of the contractor beyond their occupation in carrying out the work embraced in the contract with the Government. (29 Op. Atty. Gen., 629. See also id., 534.)

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For the purchase, manufacture, and test of ammunition[1] for mountain, field, and siege cannon, including the necessary experiments in connection therewith and the machinery necessary for its manufacture at the arsenals, six hundred thousand dollars: *Provided*, That, except in time of war or when in the judgment of the President war is imminent, no part of this or of any other sum in this Act for ammunition shall be expended for the purchase of any ammunition from any person, firm, or corporation which has not at the time of commencement of said work established an eight hour workday for all employees, laborers, and mechanics engaged or to be engaged in the work of manufacturing the ammunition named herein. *Act of June 6, 1912 (37 Stat. 126, Fortification)*.

1232. *Amendment of Act, August 1, 1892.*—That sections one, two, and three of an act entitled "An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia" be amended to read as follows:

"SEC. 1. That the service and employment of all laborers and mechanics who are now, or may hereafter, be employed by the Government of the United States or the District of Columbia, or by any contractor or subcontractor, upon a public work of the United States or of the District of Columbia, and of all persons who are now, or may hereafter be, employed by the Government of the United States or the District of Columbia, or any contractor or subcontractor, to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia, is hereby limited and restricted to eight hours in any one calendar day; and it shall be unlawful for any officer of the United States Government or of the District of Columbia, or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics or of such persons employed to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia, to require or permit any such laborer or mechanic or any such person employed to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia, to work more than eight hours in any

[1] The meaning of the word "ammunition" is the generally accepted meaning of the word as used by the War and Navy Departments. It means something different from materials for ammunition. It is generally the assembled or practically complete product, substantially ready for use in firearms. The law does not apply to purchase of ammunition made abroad. (29 Op. Atty. Gen., 483.)

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calendar day, except in case of extraordinary emergency: *Provided*, That nothing in this act shall apply or be construed to apply to persons employed in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia while not directly operating dredging or rock excavating machinery or tools, nor to persons engaged in construction or repair of levees or revetments necessary for protection against floods or overflows on the navigable rivers of the United States.

"SEC. 2. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon a public work of the United States or of the District of Columbia, or any person employed to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia, who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine not to exceed one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

"SEC. 3. That the provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon a public work of the United States or of the District of Columbia, or persons employed to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United States or of the District of Columbia, for which contracts have been entered into prior to the passing of this Act or may be entered into under the provisions of appropriation Acts approved prior to the passage of this Act.

"SEC. 4. That this act shall become effective and be in force on and after March first, nineteen hundred and thirteen."[1] *Act of Mar. 3, 1913 (37 Stats. 726).*

TRANSFER OF CONTRACT PROHIBITED.

1233. *Same.*—No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such con-

[1] This act takes the place of the act of August 1, 1892. The notes given in connection with the former act are applicable to the recent act.

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tract by the contracting parties, are reserved to the United States.[1] *Sec. 3737, R. S.*

MISCELLANEOUS PROVISIONS.

1234. *Preference for American material.*—In all contracts for material for any public improvement the Secretary of War shall give preference to American material,[2] and all labor thereon shall be performed within the jurisdiction of the United States. *Sec. 2, Act of Mar. 3, 1875 (18 Stat. 455).*

1235. *Means of transportation.*—Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quarter-

[1] This clause is imperative and bars any action by the assignor as well as the assignee. (Wanless *v.* U. S., 6 Ct. Cls., 123.) The purpose of the act of July 17, 1862 (sec. 3737, R. S.), prohibiting the transfer of Government contracts, was to secure the personal attention and services of the contractor and to render him liable to punishment under section 16 of the same act. * * * No formal or written transfer is necessary to bring the case within the prohibition of the act. It is sufficient to annul the contract that the facts disclose a substantial transfer. (Francis *v.* U. S., 11 Ct. Cls., 638; Wheelan *v.* U. S., 5 Ct. Cls., 504; McCord's Case, 9 Ct. Cls., 155; 10 Opin. Att. Gen., 523.) But it has been held by the Attorney General that the statute on the subject (sec. 3737, R. S.), is intended simply for the benefit and protection of the United States, which, therefore, is not compelled to avail itself of a transfer by the contractor to annul the contract, but may recognize the same and accept and pay the assignee. "Were it to be held," observes the Attorney General, "that a transfer of an interest would absolutely avoid the contract, it would enable any party making a contract with the United States to avoid it by simply transferring an interest therein, which is a construction manifestly inadmissible." Opinion in the case of the "Fifteen per cent contracts." (15 Opins., 235.) And similarly held by the same authority in a later opinion, in 16 Opins., 277, that while the United States may avail itself of an assignment to declare the contract annulled, it is not required to do so, but, if deemed to be for its interests, may recognize the assignee. But it is clear that an officer of the Army could not properly assume to treat an assignment of a contract (or interest therein) as valid without the authority and direction of the Secretary of War. (See, also, to same effect, Burck *v.* Taylor, 152 U. S., 634.)

Partnership arrangements and arrangements for financial assistance in connection with a contract will not ordinarily constitute an assignment. (Hobbs *v.* McLean, 117 U. S., 567; Coates *v.* U. S., 53 Fed. Rep., 989; Dulaney *v.* Scudder, 94 id., 6.) A contractor with the United States does not, by contracting with a third party to furnish material for the work, assign the contract within the meaning of section 3737, Revised Statutes. (U. S. *v.* Farley, 91 Fed. Rep., 474.) It has, however, been held that section 3477, Revised Statutes, which prohibits or makes null and void all transfers and assignments of claims against the Government, does not apply to involuntary assignments in bankruptcy (Erwin *v.* U. S., 97 U. S., 392), or even to voluntary assignments for the benefit of creditors (Goodman *v.* Niblack, 102 U. S., 556); and the reasoning of this case applies with equal force to section 3737. (2 Comp. Dec., 50.) So it has been held that section 3737, Revised Statutes, does not apply to assignments by operation of law such as to personal representatives of a deceased contractor or to a receiver appointed in judicial proceedings. (See 2 Comp. Dec., 514; 10 id., 159, 168; Burks case, 13 Ct. Cls., 231; McKay *v.* U. S., 27 id., 422.) However, where the contract calls for the personal service of the contractor, as, for instance, service as an artist, the contract terminates with his death and can not be carried out by his executor or administrator. (7 Comp. Dec., 402.) See further as to construction of this section, Dig. Op. J. A. G. (1912), pages 347–350, and notes thereto.

[2] See paragraph 1205, ante, as to preference for articles of domestic production or manufacture in procuring military supplies.

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master's Department, by contract, after due legal advertisement, except in cases of extreme emergency. *Act of July 5, 1884 (23 Stat. 110).*

1236. *Contracts for printing.*—No part of the appropriations for the Quartermaster's Department shall be expended on printing unless the same shall be done at the Government Printing Office, or by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the purchase of material and hire of the necessary labor for the purpose. *Act of Aug. 24, 1912 (37 Stat. 579).*

1237. *Post bakeries.*—For the current fiscal year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bakehouse to carry on post bakeries; for the necessary furniture, text-books, paper, and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; * * * each and all for use of the enlisted men of the Army. *Act of June 13, 1890 (26 Stat. 152).*

1238. *Delivery of subsistence supplies.*—Contracts for subsistence supplies for the Army, made by the Commissary-General, on public notice, shall provide for a complete delivery of such articles, on inspection, at such places as shall be stipulated. *Sec. 3715, R. S.*

1239. *Purchase of steel.*—No contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided, for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertising. *Act of Feb. 24, 1891 (26 Stat. 769).*

1240. *Purchases from Indians.*—The Secretary of War is hereby authorized and directed when making purchases for the military posts or service on or near Indian reservations to purchase in open market, from the Indians as far as practicable, at fair and reasonable rates, not to exceed the market prices in the localities, any cattle, grain, hay, fuel, or other produce or merchandise they may have for sale and which may be required for the military service. *Sec. 4, Act of Jan. 19, 1891 (26 Stat. 721).*

1241. *Name of contractor on supplies.*—Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received unless so marked and distinguished. *Sec. 3731, R. S.*

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1242. *Inspection of fuel—District of Columbia.*—It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service. The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel. *Sec. 3711, R. S., as amended by Sec. 6, Act of Mar. 2, 1895 (28 Stat. 808), and Sec. 6, Act of Mar. 15, 1898 (30 Stat. 316).*

1243. *Same—Copy of appointment to accounting officers.*—The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section. *Sec. 3712, R. S.*

1244. *Same—Certificate of inspector required.*—It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer. *Sec. 3713, R. S.*

PENAL OFFENSES.

1245. *Member of Congress, etc.—Pay for procuring contract.*—Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring, or aiding to procure, any contract, appointive office, or place, from the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever; or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money, property, or other valuable consid-

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eration whatever, for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void.[1] *Sec. 112, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1108).*

1246. *Same—For services in relation to contract.*—Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.[2] *Sec. 113, id., 1109.*

1247. *Member of Congress—Interested in contract.*—Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorized to make contracts on its behalf, shall be fined not more than three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever

[1] This section is taken from section 1781, Revised Statutes, which is repealed.

[2] This section is taken from section 1782, Revised Statutes, which is repealed. Sections 1781 and 1782 made it illegal for an officer of the United States to have such connection with a Government contract as an agent, attorney, or solicitor assumes when he procures or aids to procure such a contract for another, or when he prosecutes for another against the Government any claim founded on a Government contract. But they do not prohibit executive officers of the Government, including pension agents, from contracting directly with the Government as principals in matters separate from their offices and the performance of their official duties, or being interested in such contracts after they are procured. (14 Opin. Att. Gen., 482; id., 133.)

No person dealing with a public officer can be permitted to influence him in a way prejudicial to the Government. (Garman *v.* U. S., 34 Ct. Cls., 237.)

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any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties, for the recovery of the money so advanced.[1] *Sec. 114, id.*

1248. *Officer contracting with Member of Congress, etc.*—Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars. *Sec. 115, id.*

1249. *Same—Exception as to corporations.*—Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement. *Sec. 116, id.*

1250. *Agent of corporation, etc., acting as agent of the United States.*—No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company,

[1] This paragraph supersedes section 3739 of the Revised Statutes, which is repealed. Sections 3739 to 3742, Revised Statutes, made it illegal for an officer of the United States to contract for or purchase for the United States, any supplies from a Member or Delegate to Congress or from a firm or association other than an incorporated company of which such Member or Delegate was a member or in which he was pecuniarily interested. (See 2 Op. Atty. Gen., 40; 4 id., 47; U. S. *v.* Deitrich, 126 Fed. Rep., 671.) That section 3739, Revised Statutes, did not affect contracts made with persons who were simply elected Members of or Delegates to Congress, and had not actually become such by being sworn in. (See Op. of Atty. Gen., 15 Op., 280.) Sections 114 and 115 of the Criminal Code, which supersede sections 3739 and 3742, Revised Statutes, broadened the legislation so as to apply to Members of Congress from the time of their election and before qualification. These sections did not, however, forbid the acceptance of a Member of Congress or other person within their provisions as surety on the bond of a contractor. (18 Op. Atty. Gen., 287; Dig. Op. J. A. G. (1912), p. 353, B.)

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association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years. *Sec. 41, id., 1097.*

1251. *Bribery.*—Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.[1] *Sec. 39, id., 1096.*

(This paragraph is the same as section 5451 of the Revised Statutes, which is repealed.)

1252. *Extortion.*—Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.[2] *Sec. 85, id., 1104.*

[1] Though an officer may have full power to enter into a contract, yet the contract may be void for fraud as having been made by the collusion of the officer, and all negotiations and circumstances surrounding the contract, as well as its terms, may be examined to prove fraud. (Hitchcock *v.* City of Galveston, 3 Woods, 292.) Three persons, one of them the Government agent who had charge of letting the contract, entered into an agreement by which two were to do the work, and each was to have one-third of the profits. *Held* that such a contract was a fraud on the Government, and that an action founded thereon by one partner against the other could not be maintained. (Bartle *v.* Coleman, 3 Cranch, C. C., 283.)

[2] This section is taken from section 5481, Revised Statutes, as amended by act of June 28, 1906 (34 Stat. 546).

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1253. *Witness accepting bribe.*—Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both. *Sec. 134, id., 1113.*

1254. *Officer, etc., accepting bribe.*—Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.[1] *Sec. 117, id., 1109.*

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[1] This section is taken from sections 5500, 5501, and 5502, Revised Statutes, which are repealed.

An agreement to use personal influence with a Government agent in order to procure a Government contract is void. So where plaintiff, being consul general of the Turkish Government, agreed with defendant to use his personal influence with a special agent of the Turkish Goverment to procure contracts between that Government and defendant, and did use such influence with success, it was held that plaintiff could maintain no action for his services in procuring such contracts. (Oscanyan *v.* Arms Company, 13 Otto, 261.)

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CHAPTER XXX.

PUBLIC PROPERTY.

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ACQUISITION [1] AND ACCOUNTABILITY.

1255. *Power to acquire and dispose of the property of the United States vested in Congress.*—The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.[2] *Constitution, Art. IV, sec. 3.*

[1] The acquisition of property on behalf of the United States, unless the same be authorized by law, is prohibited by sections 3732 and 3736 Revised Statutes. (See paragraphs 1190 and 1192, ante, under chapter entitled Contracts and purchases.)

[2] This fundamental rule of our public law is expressed by Attorney-General Hoar (13 Opins., 46) as follows: "I am clearly of opinion that the Secretary of War can not convey to any person any interest in land belonging to the United States, except in pursuance of an act of Cogress expressly or impliedly authorizing him to do so." (And see U. S. *v.* Nichols, 1 Paine, 646 (cited post); Seabury *v.* Field, McAllister, 1; U. S. *v.* Hare, 4 Sawyer, 653, 669.)

See Friedman *v.* Goodwin (1 McAllister, 148), where a lease made by the post commander at San Francisco, of a part of a "government reserve," though approved by the military governor of the then Territory, and also by the Secretary of the Interior, was held void because not authorized by Congress. The court declares the "utter impotency of any attempt by an officer of the Government to alien any land, the property of the United States, without the authority of an act of Congress;" adding that "the President, with the heads of the Departments combined," could not effect such an object. (And see 4 Opins. Atty. Gen., 480; 9 id., 476; 13 id., 46; U. S. *v.* Hare, 4 Sawyer, 670–671.) In the last case the court say: "The Secretary of the Treasury can not execute or approve of a lease of any property belonging to the United States without special authority of law."

The leading case on this point is United States *v.* Nichols (1 Paine, U. S. Circ. Ct. R., 646), in which it was held that a sale or loan, by the commandant of an arsenal, of a quantity of *lead* belonging to the United States, was illegal and invalid. The court say: "The Constitution declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' No public property can therefore be disposed of without the authority of law, either by an express act of Congress for that purpose, or by giving the authority to some Department or subordinate agent. No law has been shown authorizing the sale of this lead; nor is any such authority to be inferred from the general

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PERSONAL PROPERTY.

1256. *Charges for failure to account therefor to be certified to the accounting officers.*—That instead of forwarding to the accounting officers of the Treasury Department returns of public property intrusted to the possession of officers or agents, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster-General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any Department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the proper accounting officer of the Treasury Department, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him.[1] *Sec. 1, Act of Mar. 29, 1894 (28 Stat. 47).*

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power vested in any of the Departments of the Government. The power, if lodged anywhere, would seem most appropriately to belong to the War Department. But there is no such express or implied power in that Department to sell the public property put under its management." And see the same principle recognized in an opinion of the Attorney-General (in 16 Opins., 477), in which it is held that the Secretary of War was not empowered to sell *arms* to a State in the absence of authority from Congress.

See Dig. Opin. J. A. G., pp. 901–906, edition 1912, for further and extended discussion of this subject.

[1] The effect of the above statute was to divest the Auditor of the jurisdiction theretofore possessed by him over the property accounts and transactions of officers of the Navy (and War) Department, and to relieve him of all responsibility in relation to the disposition of property intrusted to said officers, except in cases where the officer "whose duty it is to receive or examine returns of such property shall certify to the proper accounting officer of the Treasury Department (the Auditor), for debiting on the proper account any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him."

Under this act the duty and responsibility of determining questions relating to the correct disposition or loss of property in the Marine Corps have been transferred to and vested in the proper officer of the Navy Department, and it seems clear that the Auditor will have no authority over or in relation to the property mentioned in the cash voucher evidencing the purchase of forage under consideration until he has been furnished with a certificate required by section 1 of said act.

Jurisdiction over property accounts can not be given to the Auditor by injecting papers into cash accounts tending to show what disposition has been made of the property. Such evidence may well be excluded from the cash accounts, and the responsibility for determining questions relating to property accountability be left where it belongs, where the law has placed it. (2 Comp. Dec., 264, 267, 268; 4 id., 422.)

In the case of Isaac W. Patrick, Indian agent at the Great Nemaha Agency, upon a suit to recover on his bond for public property alleged to have been unaccounted for, such failure to account having been shown to be due to clerical errors, it was held by the circuit court of appeals for the Eighth circuit, in March, 1896, that "a Government agent is not to be held liable for property still in the possession of the agency and which has never been lost, merely because a careless clerk, appointed by the Government itself to keep the accounts of the agent, has omitted it from the return which he is required to make." (U. S. *v.* Patrick, 73 Fed. Rep., 800.)

The failure of an Indian agent, through clerical errors, to include in his accounts property which, in fact, remains at the agency, and which is not lost

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1257. *Same—Nature and effect of certificates.*—That said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the accounting officers of the Treasury Department in accounting. *Sec. 2, id.*

1258. *Officer to have opportunity to relieve himself from liability.*—That the manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by this act, except as provided in section one; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability.[1] *Sec. 3, id.*

1259. *Regulations by heads of departments.*—The heads of the several Departments are hereby empowered to make and enforce regulations to carry out the provisions of this act. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.[2] *Secs. 4 and 5, id.*

1259½. *Public property under Quartermaster General, system of accountability for.*—The Quartermaster-General, under the direction of the Secretary of War, shall prescribe and enforce a system of accountability for all quartermaster's supplies to the Army or to officers, seamen, and marines. And he shall account to the Secretary of War at least once in three months for all property and money that may pass through his hands, or the hands of his subordinate officers. *Sec. 1139, R. S., as amended by Act of Feb. 27, 1877 (19 Stat. 242).*

1260. *Accounts of company commanders therefor—Affidavits to be considered in case of loss.*—In settling the accounts of the commanding officer of a company for clothing and other military supplies, the affidavit of any such officer may be received to show the loss of vouchers or company books, or any matter or circumstance tending to prove that any apparent deficiency was occasioned by unavoidable accident or lost in actual service, without any fault on his part, or that the whole or any part of such clothing and supplies had been properly and legally used and appropriated; and such affidavit may be considered as evidence to establish the facts set forth, with or with-

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to the Government, does not entitle the United States to recover the value thereof in a suit on his bond; and he may show these facts in defense. The technical failure to account would authorize a recovery of no more than nominal damages. (Id.)

[1] Section 12 of the act of July 31, 1894 (28 Stat. 208), requiring certain quarterly accounts to be rendered within twenty days after the expiration of the quarter to which they relate, has no application to property returns, the rendition of which is regulated by the act of March 29, 1894. (3 Comp. Dec., 422.)

[2] For regulations prepared and promulgated by the Secretary of War in execution of the above enactment, see paragraphs 693–703, Army Regulations of 1913.

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out other evidence, as may seem to the Secretary of War just and proper under the circumstances of the case.[1] *Sec. 225, R. S.*

1261. *Disposition of damaged or unsuitable property.*—The President may cause to be sold any military stores which, upon proper inspection or survey, appear to be damaged, or unsuitable for the public service. Such inspection or survey shall be made by officers designated by the Secretary of War, and the sales shall be made under regulations prescribed by him.[2] *Sec. 1241, R. S.*

1262. *Sale, barter, etc., of clothing, arms, etc., furnished to soldiers.*—The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person, not a soldier or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments so furnished, and which have been the subjects of any such barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein, but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift.[3] *Sec. 3748, R. S.*

OFFENSES AGAINST PERSONAL PROPERTY.

1263. *Embezzlement, stealing, etc.*—Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.[4] *Sec. 47, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1097).*

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[1] Sections 1303 and 1304, Revised Statutes, require that deficiency in or damage to any article of military supplies and repairs or damages to arms, etc., due to negligence shall be charged against the delinquent, and that the cost or value thereof shall be deducted from his pay. (See pars. 690 and 691, ante, under chapter entitled "The Quartermaster Corps.")

For regulations relative to damaged, lost, or destroyed military property, see paragraphs 682–692, Army Regulations of 1913.

For provisions respecting boards of survey, see paragraphs 710–726, id.

[2] For statutes authorizing and regulating the disposition of obsolete and unserviceable ordnance and ordnance stores, see paragraphs 842–846, ante, under chapter entitled "The Ordnance Department."

Steamships in the transport service can not be disposed of without consent of Congress. (See par. 134, ante, under the chapter entitled "The Department of War." See Dig. Opin. J. A. G. (1912), pp. 957–960.)

[3] See Dig. Opin. J. A. G. (1912), pp. 960 and 961.

[4] Sections 44 and 286 of the criminal code make it a criminal offense to injure or destroy the works or material of any submarine mine or torpedo, or to injure or destroy any vessel or material for building or repairing vessels, or any military stores or munitions of war. (See pars. 1315 and 1316, post.)

For offenses of officers and enlisted men against the personal property of the United States, see the fifteenth, sixteenth, and seventeenth Articles of War.

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1264. *Same.*—Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceeding section.[1] *Sec. 36, id., 1096.*

1265. *Robbery, larceny, etc.*—Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both. *Sec. 46, id., 1097.*

1266. *Receiving stolen property.*—Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.[2] *Sec. 48, id., 1098.*

1267. *Aiding or abetting with intent to defraud any captor or claimant of property captured as a prize.*—Whoever shall willfully do, or aid or advise in the doing, of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both. *Sec. 38, id., 1096.*

REAL PROPERTY—PUBLIC LANDS.

1268. *Lands reserved not subject to preemption.*—The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of preemption, to wit:

First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose. * * * *Sec. 2258, R. S.*

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[1] Several courts have held this section unenforceable on account of the indefinite nature of the penal clause. In view of those decisions the Attorney General has directed, by Circular No. 308 of 1912, that no more prosecutions shall be brought under this section.

[2] For knowingly purchasing or receiving in pledge from a soldier, sailor, or other person employed in the military service, arms, clothing, etc., see paragraph 220, The Treasury Department.

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1269. *Same—Not subject to reservation for town-sites.*—The provision of this chapter[1] shall not apply to military or other reservations[2] heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain or otherwise. *Sec. 2393, R. S.*

1270. *Soldiers' homesteads.*—Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, and every private soldier and officer who has served in the Army of the United States during the Spanish war, or who has served, is serving, or shall have served in

[1] Chapter 8, Revised Statutes, relating to the reservation and survey of town sites on the public lands.

[2] *Military reservations.*—No specific statutory authority exists empowering the President to reserve public lands; but the right to reserve such lands for public uses is recognized by the courts. (14 Dec. Int. Dept., 426, 607, 628; Wolsey *v.* Chapman, 101 U. S., 755, 768; Walcott *v.* Des Moines Co., 5 Wall., 681.) Such reservation may be effected by proclamation or by Executive order. (13 Dec. Int. Dept., 426.)

Mineral lands belonging to the public domain, which are reserved from sale under section 2318 of the Revised Statutes, may be reserved for military or other purposes by the President. Where such lands are included in a military reservation, they are not open to exploration and purchase under section 2319 of the Revised Statutes. It is otherwise where a right has once attached to mineral land, under the laws relating thereto, in favor of the locator of a mining claim. Here the land, during the existence of such right, is not subject to reservation by the President; and if it be subsequently reserved, the locator may nevertheless perfect his title. (17 Opin. Att. Gen., 230.)

When public land subject to homestead settlement has been duly entered under the homestead law, it thenceforth ceases to be at the disposal of the Government so long as the entry of the settler subsists. Hence it can not, while such entry stands, be set apart by the President for a military reservation. (Id., 160.)

Where a part of the public domain has once been reserved by the President for military or other public purposes, and subsequently the land so reserved becomes unnecessary for such purposes, it can not be restored to the public domain without authority from Congress. (Id., 168; 16 id., 123.)

By Article VI, section 2, of the Constitution, "all treaties made under the authority of the United States" are declared to be "the supreme law of the land"; and Indian reservations "have generally been made through the exercise of the treaty-making power, and in fulfillment of treaty obligations. (14 id., 182.) That land can not be reserved or occupied for military purposes to the prejudice of a title previously vested in an individual or a corporation, see, futher, 9 id., 339; 13 id., 469.

See Land Dec. Int. Dept., 6 id., 18, 317; 13 id., 426, 607, 628, 30 id., 276; 8 Fed. Rep., 883; 12 id., 449; 92 U. S., 733; 101 id., 768; 5 Wallace, 681.

For further discussion of this subject of the reservation of public lands, see Dig. Opin. J. A. G. (1912), pp. 922-924, and cases therein cited.

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the said Army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement. *Sec. 2304, R. S., as amended by Act of Mar. 1, 1901 (31 Stat. 847).*

1271. *Same—Deduction for military service from time required to perfect title.*—The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: *Provided*, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive Government patent for said land; and that upon proof produced to

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the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue.[1] *Sec. 2305, R. S., as amended by Act of Mar. 1, 1901 (31 Stat. 847).*

1272. *Same—Military service equivalent to residence.*—Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service. *Sec. 2308, R. S.*

In every case in which a settler on the public land of the United States under the homestead laws enlists or is actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the existing war with Spain, or during any other war in which the United States may be engaged, his services therein shall, in the administration of the homestead laws, be construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, unless it shall be alleged in the preliminary affidavit or affidavits of contest, and proved at the hearing in cases hereafter initiated, that the settler's alleged absence from the land was not due to his employment in such service: *Provided*, That if such settler shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence

[1] Section 4, Act of April 27, 1904 (33 Stat. 322) provides that "The rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the act of March first, nineteen hundred and one, shall not be abridged."

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without reference to the time of actual service: *Provided further*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements. *Act of June 16, 1898 (30 Stat. 473).*

1273. *Same—May enter by agent.*—Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in preemption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law. *Sec. 2309, R. S.*

ACQUISITION OF LANDS.

1274. *Purchases to be authorized by law.*—No land shall be purchased on account of the United States, except under a law authorizing such purchase.[1] *Sec. 3736, R. S.*

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[1] See chapters entitled The Department of Justice, Contracts and Purchases, and The Engineer Corps for additional provisions respecting the acquisition of lands. "When, in an act appropriating for the purchase of additional land for a public building, the piece of ground to be purchased is particularly described, the appropriation can not be used for the purchase of another tract equally suitable for the purpose, and at a price within the sum provided, although the piece named can not be secured within the amount appropriated." (2 Comp. Dec., 77.) See also section 1136, Revised Statutes (par. 1289, post), for provision requiring all officers of the United States having title papers of property, purchased or about to be purchased, in their possession to furnish the same forthwith to the Attorney-General.

Lands acquired by the United States for public uses, by purchase with the consent of the legislatures of the States, or acquired by an exercise of the right of eminent domain are not "public lands," that term applying only to such lands as are subject to sale or other disposition under general laws. (Newhall *v.* Sanger, 92 U. S., 761; 5 Opin. Att. Gen., 578.) Power over such lands is vested in Congress by the Constitution, without limitation, and is the foundation upon which the Territorial governments rest. (U. S. *v.* Gratiot, 14 Pet., 526.) The power of Congress over the public land and the effect of its grants can not be interferred with by State legislation. (Gibson *v.* Chouteau, 13 Wall., 92.)

Congress has the sole power to declare the dignity and effect of titles emanating from the United States, and the whole legislation of the Federal Government, in reference to the public lands, declares the patent the superior and conclusive evidence of legal title. Until its issuance the fee is in the Government; by the patent, it passes to the grantee, and he is entitled to recover the possession in ejectment. (Bagnell *v.* Broderick, 13 Peters, 436, 450; Wilcox *v.* Jackson, id., 498, 516; Langdon *v.* Sherwood, 124 U. S., 74, 83; Hussman *v.* Dunham, 165 U. S., 144; Carter *v.* Ruddy, 166 U. S., 493; Kirwan *v.* Murphy, 83 Fed. Rep., 275.)

There is no way for titles to land to be divested out of the United States, except in strict pursuance of some law of the United States, and, as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length of time, can not ripen into title as against the United States. (Drew *v.* Valentine, 18 Fed. Rep., 712.)

In the administration of the public lands the decisions of the Land Department upon questions of fact are conclusive, and only questions of law can be reviewed by the courts. (Catholic Bishop of Nesqually *v.* U. S., 158 U. S., 155.)

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1275. *Assent of States to purchases.*—The President of the United States is authorized to procure the assent of the legislature of any State within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings without such consent having been obtained. *Sec. 1838, R. S.*

1276. *Acquisition by condemnation.*—In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the district wherein such real estate is located shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.[1] *Sec. 1, Act of Aug. 1, 1888 (25 Stat. 357).*

The expense of procuring an abstract of title to land to be used as a site for a fortification is a proper charge against the appropriation made for the purchase of the site, if the abstract is needed by the United States attorney to assist him in examining the title, provided the land is to be purchased and not condemned. (3 Comp. Dec., 216.)

As to the proper person to make certificate of "no liens" see Dig. Opin. J. A. G., 914 II A 6 b. See also Dig. Opin. J. A. G., pp. 910 and 911 for further discussion of the application of the above section of the Revised Statutes.

See G. O. 47 of 1881 for Attorney-General's regulations as to making deeds, proving title to lands, etc.

The act of Congress does not prohibit the acquisition by the United States of the legal title to land, without express legislative authority, when it is taken by way of security for debt. (Neilson *v.* Lagow, 12 How., 98.)

[1] The power to take private property for public uses, generally termed the right of eminent domain, belongs to every independent government. It is an incident of sovereignty and requires no constitutional recognition. The provision found in the fifth amendment to the Federal Constitution, and in the constitutions of the several States, for just compensation for property taken, is merely a limitation upon the use of the power. It is no part of the power itself, but a condition upon which the power may be exercised. (U. S. *v.* Jones, 109 U. S., 513, 518; Boom Co. *v.* Patterson, 98 U. S., 106; Kohl *v.* U. S., 91 U. S., 367; Cooley Con. Lim., 526; U. S. *v.* Oregon Railway and Nav. Co., 16 F. R., 524.) In some instances the States, by virtue of their own right of eminent domain, have condemned lands for the use of the General Government, and such condemnations have been sustained by their courts, without, however, denying the right of the United States to act independently of the States. (Kohl *v.* U. S., 91 U. S., 367, 373; Gilmer *v.* Lime Point, 18 Cal., 729; Burt *v.* Merchants' Ins. Co., 106 Mass., 356; U. S. *v.* Jones, 109 U. S., 513.) The estate acquired by such exercise of the right of eminent domain on the part of the United States may be a fee simple or may be in the nature of an easement. (16 Op. Att. Gen., 387.) The legislature is the judge of the necessity for exercising the right in any case. (Cooley Const. Law, 527.) It is now well settled that whenever, in the execution of the powers granted to the United States by the Constitution, lands in any State are needed by the United States, for a

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1277. *Same—Procedure.*—The practice, pleadings, forms, and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms, and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding. *Sec. 2, id.*

1278. *Releases by officers of their interests to the United States.*—Whenever any lands have been or shall be conveyed to individuals or officers, for the use or benefit of the United States, the President is authorized to obtain from such person a release of his interest to the United States. *Sec. 3752, R. S.*

1279. *Leases of property of the United States not required for public use.*—Authority is hereby given to the Secretary of War, when in his discretion it will be for the public good, to lease, for a period of not exceeding five years and revocable at any time, such property of the United States under his control as may not for the time be required for public use and for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress: *Provided*, That nothing in this act contained shall be held to apply to mineral or phosphate lands.[1] *Act of July 28, 1892 (27 Stat. 321).*

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fort, magazine, dockyard, lighthouse, customhouse, post office, or any other public purpose, and can not be acquired by agreement with the owners, the Congress of the United States, exercising the right of eminent domain, and making just compensation to the owners, may authorize such lands to be taken, either by proceedings in the courts of the State with its consent, or by proceedings in the courts of the United States, with or without any consent or concurrent act of the State, as Congress may direct or permit. (Chappell *v.* U. S., 160 U. S., 499, 509, and 510; citing Harris *v.* Elliott, 10 Pet., 25; Kohl *v.* U. S., 91 U. S., 367; U. S. *v.* Jones, 109 U. S., 513; Fort Leavenworth R. R. *v.* Lowe, 114 U. S., 525, 531, 532; Cherokee Nation *v.* Kansas Rwy., 135 U. S., 641, 656; Monongahela Navigation Co. *v.* U. S., 148 U. S., 312; Luxton *v.* North River Bridge Co., 147 U. S., 337, and 153 U. S., 525; Burt *v.* Merchants' Ins. Co., 106 Mass., 356; U. S., petitioners, 96 N. Y., 227.)

For the acquisition of lands for fortifications and coast defenses, see paragraph 802, ante.

[1] A license is an authority, revocable at pleasure, to do a particular act or series of acts upon the land of another without possessing an estate therein. (Morgan *v.* U. S., 14 Ct. Cls., 319.)

From the act of July 5, 1884 (23 Stat. 103), it may be regarded as certain that it was the view of Congress that an explicit authority was necessary for even a transient occupation of a military reservation for other than its special purpose. The act of July 28, 1892, authorizing the Secretary of War to lease such property of the United States under his control as may not for the time be required for public use, forbids an occupation which contemplates permanency, or duration longer than five years. The Secretary of War has no power to accept a donation of property for the Government for use in perpetuity by Roman Catholics. A revocable license, without limitation as to time, by the Secretary of War to a Roman Catholic archbishop, to erect and maintain a chapel on the military reservation at West Point, transcends the statute. (21 Opin. Att. Gen., 537; id., 473, 476; 19 id., 28.)

See subject of leases and licenses in Dig. Opin., J. A. G., pp. 948–957.

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MILITARY RESERVATIONS.

1280. *Jurisdiction over reservations.*[1]—The Congress shall have Power * * *

To exercise exclusive Legislation in all Cases whatsoever, over such district (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. *Art. I, sec. 8, Constitution of the United States.*

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[1] Lands may be acquired by the United States, within the territory of a State, in any one of three ways: (1) By purchase without the consent of the legislature of the State within which the lands are situated; (2) by purchase with such consent; (3) by an exercise of the right of eminent domain. (Kohl *v.* U. S., 91 U. S., 367.)

When the United States acquire lands within the limits of a State, with the consent of the legislature of the State, for the erection of forts, arsenals, dockyards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the legislature they will hold the lands subject to this qualification, that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But when not used as such instrumentalities the legislative power of the State will be as full and complete as over any other places within her limits. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 539.) Where the absoute title to property remains in the United States, no matter for what purpose it is acquired or held, it is not subject to State or municipal taxation. (Am. and Engl. Ency. of Law, vol. 25, p. 110, and cases cited.)

The purcahse of lands in a State by the General Government, with legislative consent, does not, *ipso facto*, confer upon the General Government exclusive jurisdiction, unless the purchase is for a fort or for some other purpose distinctly named in Article I, section 8, of the Constitution; and in order that exclusive jurisdiction may be acquired over land taken for any other purpose the act providing therefor and calling for the consent must unequivocally declare that exclusive jurisdiction is intended and necessary, or such necessity must be manifest from the purpose of the act. Accordingly, *held*, that the acts of Congress establishing the National Home for Disabled Volunteer Soldiers and creating a corporation authorized to take and hold lands for the purpose of such homes, containing no declaration of the necessity of exclusive jurisdiction in the General Government over such lands, do not vest such exclusive jurisdiction in the United States, upon the consent of the State being given to the acquisition of such lands. (In re Kelly, 71 Fed. Rep., 545.)

A cession to the General Government, in the act giving the consent of the State to the purchase of such land, of "jurisdiction" does not confer exclusive jurisdiction, the purpose of the act not requiring it, but such jurisdiction only, concurrent with that of the State, as Congress may find necessary for the objects of the cession. (Id.)

Upon lands so ceded for the purpose of a home for disabled volunteers the criminal laws of the United States, which apply only to places within their exclusive jurisdiction, are not operative. (Id.)

A State may cede to the United States exclusive jurisdiction over a tract within its limits in a manner not provided for in the Constitution of the United

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1281. *Disposition of useless military reservations.*—That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same, or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof. *Sec. 1, Act of July 5, 1884 (23 Stat. 103).*

States, and may prescribe conditions to the cession, if they are not inconsistent with the effective use of the property for the purpose intended. The reservation which has usually accompanied the consent of the States, that civil and criminal process of the State courts may be served in the places purchased, is not considered as interfering in any respect with the supremacy of the United States over them, but is admitted to prevent them from becoming an asylum for fugitives from justice. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 533.) Such reservations provide only that civil and criminal process issued under the authority of the State, which must, of course, be for acts done and cognizable by the State, may be executed within the ceded lands, notwithstanding the cession. Not a word is said from which we can infer that it was intended that the State should have a right to punish for acts done within the ceded lands. (Id., 534; United States *v.* Cornell, 2 Mason, 60; Commonwealth *v.* Clary, 8 Mass., 72; Mitchell *v.* Tibbetts, 17 Pick., 298; People *v.* Godfrey, 17 Johns (N. Y.), 225.)

Residents within such ceded districts have none of the duties and obligations and none of the rights and privileges of citizens of the States within which such lands are situated. They are not subject to taxation; they can not exercise the right of suffrage. (6 Opin. Att. Gen., 577; 10 id., 35; Sinks *v.* Reese, 19 Ohio, 306.) They are not entitled to the benefit of the public schools. (1 Met. (Mass.), 580.)

An act of the legislature of a State ceding to the United States the jurisdiction of the State over a tract of land used as a military reservation upon condition that such jurisdiction shall continue only so long as the United States shall own and occupy such reservation; that the State shall have the right within the reservation to serve civil process and to execute criminal process against persons charged with crime committed within the State; and that roads may be opened and kept in repair within such reservation, cedes to the United States the entire political jurisdiction of the State over the place in question, including judicial and legislative jurisdiction, except as to service of process and opening roads, and the same can not be affected or further limited without the consent of the United States by a subsequent act of the State legislature attempting to impose additional restrictions on the jurisdiction ceded. (In re Ladd, 74 Fed. Rep., 31.)

After such cession a justice of the peace acting under authority of the State has no jurisdiction over the ceded territory in matters of alleged criminal violation of the laws of the State committed on such territory. (Id.)

It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another the municipal laws of the country—that is, laws which are intended for the protection of private rights—continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. * * * But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community and promote its health and prosperity, which are of a strictly municipal character, the rule is general that a change of government leaves them in force until by direct action of the new government they are altered or

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1282. *Permits for rights of way for reservoirs, conduits, electrical plants, etc.*—That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of

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repealed. (Chicago & Pacific R. R. *v.* McGlinn, 114 U. S., 542, 547; American Insurance Co. *v.* Cantor, 1 Pet., 542; Halleck Int. Law, ch. 34, sec. 14.)

While after such cession the municipal laws of the State governing property and property rights continue in force in the ceded territory, except so far as in conflict with the laws and regulations of the United States applying thereto, the criminal laws of the State cease to be of force within the ceded territory, and laws regulating the sale of intoxicating liquors, requiring a license therefor, and punishing unlicensed sales cease to be operative, both as in conflict with the regulations of the United States governing military reservations and as penal in character. (In re Ladd, 74 Fed. Rep., 31.)

Such cessions are "necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired, or reserved from sale." When they cease to be so used, the jurisdiction reverts to the State. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 542.)

A lease by the United States to a city for market purposes of vacant land which was a part of land ceded by the State to the United States for the purposes of a navy yard and naval hospital, with a provision that the United States may retain such use and jurisdiction no longer than the premises are used for such purposes, operates, at least while the lease is in force, to suspend the exclusive authority and jurisdiction of the United States over the leased land, and thereby makes it subject to the jurisdiction of State courts in an action for ouster therefrom. (Palmer *v.* Barrett, 162 U. S., 399.) The character and purposes of the occupation of a reservation having been officially and legally established by that branch of the Government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. (Benson *v.* U. S., 146 U. S., 331.)

Over lands reserved for military or other governmental purposes in the Territories the jurisdiction of the United States is necessarily paramount. When a Territory is admitted as a State it is within the power of Congress to stipulate for the power of exclusive jurisdiction over such reservations, or to except them from the jurisdiction of the State. Failing to do this, however, the State can exercise such authority and jurisdiction over them as over similar property held by private individuals; and the United States can acquire exclusive jurisdiction only when the same has been formally ceded by the legislature of the State in which the lands are situated. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525.) Lands acquired by the United States for public uses, by purchase with the consent of the States, or by an exercise of the right of eminent domain, are not public lands, that term applying only to "such lands as are subject to sale or other disposition under general laws." (Newhall *v.* Sanger. 92 U. S., 761.)

When an act admitting a State into the Union, or organizing a Territorial government, provides that the lands in possession of an Indian tribe shall not be a part of such State or Territory, the new government has no jurisdiction over them. (Langford *v.* Monteith, 102 U. S., 145.) For an example of such a reservation on the part of Congress in the admission of a State into the Union, see the act of July 10, 1890 (26 Stat. 222), admitting the State of Wyoming. (See subject of jurisdiction in Dig. Opin. J. A. G., pp. 931–943.)

For granting licenses to occupy and use military reservations and for removing tresspassers therefrom, see par. 212 A. R., 1913. Also as to authority to remove tresspassers, see 3 Opin. Att. Gen., 268; 19 id., 106, 476; and chapter entitled Employment of Military Force.

Upon the subject of taxation on reservations, see Dig. Opin. J. A. G., pp. 1023–1026.

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electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams and reservoirs used to promote irrigation or mining or quarrying, or the manufacture or cutting of timber or lumber, or the supplying of water for domestic, public or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this Act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park. *Act of Feb. 15, 1901 (31 Stat. 790)*.

1283. *Easements for rights of way for electrical power, telephone and telegraph lines.*—That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right of way herein granted for any one or more of the purposes herein named: *Provided*, That such right of way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the

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approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: *Provided*, That all or any part of such right of way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law, may obtain the benefit of this Act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute. *Act of Mar. 4, 1911 (36 Stat. 1253)*.

1284. *Extension of state, county and territorial roads across military reservations.*—The Secretary of War shall have authority, in his discretion, to permit the extension of State, county, and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon. *Sec. 6, Act of July 5, 1884 (23 Stat. 104)*.

1285. *Proclamation of historic landmarks.*—The President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. *Sec. 2, Act of June 8, 1906 (34 Stat. 225)*.

1286. *Permits for the examination and excavation of archæological sites.*—Permits for the examination of ruins, the excavation of archæological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the

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Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. *Sec. 3, id.*

1287. *Same—Rules and regulations.*—The secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act. *Sec. 4, id.*

1288. *Statue of liberty, Bedloes Island.*—The Treasurer of the United States is hereby authorized and directed to receive the sum of thirty-five thousand dollars, more or less, from the executive committee of the Statue of Liberty erected on land belonging to the United States on Bedloes Island, New York Harbor; and the Secretary of War is hereby authorized to keep the said statue in repair, and to pay for the same from the appropriation for "Regular supplies," under the Quartermaster's Department, in the appropriation for the support of the Army for the fiscal year in which such expenses shall be incurred. *Act of Apr. 28, 1904 (33 Stat. 498).*

MILITARY POSTS.

1289. *Establishment—Express authority of Congress required.*—Hereafter no military post within the United States shall be established without the express authority of Congress.[1] *Act of Mar. 2, 1905 (33 Stat. 836).*

1290. *Title papers to be furnished to the Attorney General.*—It shall be the duty of all officers of the United States having any of the title papers (property purchased, or about to be purchased, for erection of public buildings) in their possession, to furnish them forthwith to the Attorney General. No public money shall be expended until the written opinion of the Attorney General shall be had. *Sec. 1136, R. S.*

1291. *Expenditures for repairs—Limitation.*—That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and the erection, con-

[1] For specific regulations affecting military posts, see paragraphs 201–211, Army Regulations, 1913.

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struction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.[1] *Act of Feb. 27, 1893 (27 Stat. 484).*

1292. *Acquisition of leases in Hawaii.*—The Secretary of War is authorized to acquire leases in such lands in Hawaii as have been set aside for purposes of a military post. *Act of June 28, 1902 (32 Stat. 464).*

1293. *Post schools.*—Schools shall be established at all posts, garrisons, and permanent camps at which troops are stationed, in which the enlisted men may be instructed in the common English branches of education, and especially in the history of the United States; and the Secretary of War may detail such officers and enlisted men as may be necessary to carry out this provision. It shall be the duty of the post or garrison commander to set apart a suitable room or building for school and religious purposes.[2] *Sec. 1231, R. S.*

1294. *Post exchanges.*—That hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes.[3] *Act of July 16, 1892 (27 Stat. 178).*

1295. *Sales of liquors, etc., prohibited.*—The sale of or dealing in beer, wine, or any intoxicating liquors by any person in any post exchange or canteen or Army transport or upon any premises used for military purposes by the United States is hereby prohibited. The

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[1] A military station is merely synonymous with the term "military post," and means a place where troops are assembled; where military stores, animate and inanimate, are kept and distributed; where military duty is performed or military protection afforded; where something, in short, more or less closely connected with arms or war is kept or is to be done. (Phisterer *v.* U. S., 12 Ct. Cls., 98, 107.)

For other restrictions in respect to the construction and repair of quarters at military posts, see the title *Barracks and Quarters* in the chapter entitled The Quartermaster Corps.

When a military post located upon lands belonging to the United States is abandoned the Secretary of War has no power, in the absence of authority from Congress, to order a sale of the building, and such a sale is void. (Lear *v.* U. S., 50 Fed. Rep., 65.) A sale by a military officer is not authorized by the usages of war, or if of property not under a valid condemnation, is a trespass and passes no title. (Bowlew *v.* Lewis, 48 Mo., 32.)

[2] For statutory duties of post and regimental chaplains in respect to post schools, see chapter entitled Post Chaplains. For regulations in regard to post schools, see paragraphs 331 and 449, Army Regulations, 1913. For provisions of statute respecting textbooks, supplies of paper, etc., see paragraph 1567, ante. Also see same paragraph for authority for maintenance of post bakeries. For regulations in respect to the management and administration of post bakeries, see paragraphs 329 and 1201, Army Regulations, 1913.

[3] This provision regarding post exchanges is also included in chapter on the Quartermaster Corps, paragraph 518.

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Secretary of War is hereby directed to carry the provisions of this section into full force and effect.[1] *Sec. 38, Act of Feb. 2, 1901 (31 Stat. 758).*

NATIONAL MILITARY PARKS.

1296. *Use of military maneuvers.*—In order to obtain practical benefits of great value to the country from the establishment of national military parks, said parks and their approaches are hereby declared to be national fields for military maneuvers for the Regular Army of the United States and the National Guard or Militia of the States: *Provided*, That the said parks shall be opened for such purposes only in the discretion of the Secretary of War, and under such regulations as he may prescribe.[2] *Act of May 15, 1896 (29 Stat. 120).*

1297. *Same.*—The Secretary of War is hereby authorized, within the limits of appropriations which may from time to time be available for such purpose, to assemble, at his discretion, in camp at such season of the year and for such period as he may designate, at such field of military maneuvers, such portions of the military forces of the United States as he may think best, to receive military instruction there. *Sec. 2, id., 121.*

1298. *Same—Regulations.*—The Secretary of War is further authorized to make and publish regulations governing the assembling of the National Guard or Militia of the several States upon the maneuvering grounds, and he may detail instructors from the Regular Army for such forces during their exercises. *Sec. 2, id.*

1299. *Superintendent, Antietam battlefield.*—For pay of superintendent of Antietam battlefield, said superintendent to perform his duties under the direction of the Quartermaster's Department and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an

[1] This section replaces the requirements of the act of June 13, 1890 (26 Stat. 154), and section 17 of the act of March 2, 1899 (30 Stat. 937), *in pari materia.* For orders carrying this provision into effect, see paragraph 346, Army Regulations, 1913.

[2] Section 35 of the act of February 2, 1901 (31 Stat. 757), contained a provision that "the Secretary of War be, and he is hereby, authorized and directed to cause preliminary examinations and surveys to be made for the purpose of selecting four sites with a view to the establishment of permanent camp grounds for instruction of troops of the Regular Army and National Guard, with estimates of the cost of the sites and their equipment with all modern appliances, and for this purpose is authorized to detail such officers of the Army as may be necessary to carry on the preliminary work; and the sum of ten thousand dollars is hereby appropriated for the necessary expenses of such work, to be disbursed under the direction of the Secretary of War: *Provided*, That the Secretary of War shall report to Congress the result of such examination and surveys; and no contract for said sites shall be made nor any obligations incurred until Congress shall approve such selections and appropriate the money therefor."

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honorably discharged Union soldier, one thousand five hundred dollars.[1] *Act of Apr. 28, 1904 (33 Stat. 496.)*

NATIONAL PARKS.

1300. *Employment of troops in Yellowstone National Park.*—The Secretary of War, upon the request of the Secretary of the Interior, is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the [Yellowstone National] park for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law, and to remove such persons from the park if found therein.[2] *Act of Mar. 3, 1883 (22 Stat. 627).*

1301. *Employment of troops in National Parks in California.*—The Secretary of War, upon the request of the Secretary of the Interior, is hereafter authorized and directed to make the necessary detail of troops to prevent trespassers or intruders from entering the Sequoia National Park, the Yosemite National Park, and the General Grant National Park, respectively, in California, for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law or regulation for the government of said reservations, and to remove such persons from said parks if found therein. *Act of June 6, 1900 (31 Stat. 618).*

NATIONAL CEMETERIES.

1302. *Maintenance.*—The Secretary of War shall provide for the care and maintenance of the national military cemeteries, and for this purpose shall submit an estimate with his annual estimates to Congress, and section four thousand eight hundred and seventy-six of the Revised Statutes is hereby repealed. *Act of July 24, 1876 (19 Stat. 99).*

1303. *Superintendents—Selection.*—The superintendents of the national cemeteries shall be selected from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the Volunteer or Regular Army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field service in the line of duty. *Sec. 4874, R. S.*

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[1] The above provision has been repeated in the successive acts of appropriation, including that for the fiscal year 1914.

[2] In a letter from the Comptroller of the Treasury to the Secretary of the Interior, dated January 11, 1900, it was *held* that the act of August 4, 1886 (24 Stat. 240), and subsequent appropriation acts, having omitted the special provisions for the payment of superintendent and employees found in former acts, in effect abolished those offices on June 30, 1886, since which time there have been no civilian employees of the Interior Department in the park, the necessary protection thereof devolving on the troops detailed for that purpose by authority of the act of March 3, 1883 (22 Stat. 627).

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1304. *Superintendents—Pay and quarters.*—The superintendents of the national cemeteries shall receive for their compensation from sixty dollars to seventy-five dollars a month each,[1] according to the extent and importance of the cemeteries to which they may be respectively assigned, to be determined by the Secretary of War; and they shall also be furnished with quarters and fuel at the several cemeteries.[2] *Sec. 4875, R. S.*

1305. *Inclosures, headstones, and registers.*—In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors,[3] the Secretary of War is hereby directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone or block, which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded. *Sec. 4877, R. S.*

1306. *Erection of headstones in private cemeteries.*—That the Secretary of War is hereby authorized to erect headstones over the graves of soldiers who served in the Regular or Volunteer Army of the United States during the war for the Union, and who have been buried in private village or city cemeteries, in the same manner as provided by the law of March third, eighteen hundred and seventy-three, for those interred in national military cemeteries; and for this purpose, and for the expenses incident to such work, so much of the appropriation of one million dollars, made in the act above mentioned, as has not been expended, and as may be necessary, is hereby made available. *Act of Feb. 3, 1879 (20 Stat. 281).*

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[1] This section has been amended so as to allow the superintendent of the Arlington, Va., Cemetery $100 per month. (Act of July 30, 1912, 37 Stat. 240.)

[2] The superintendent of a national cemetery over which the State has ceded jurisdiction to the United States, and within the limits of which he resides, is exempt from the duty devolved by the State upon all male persons between certain ages to work upon the public roads. Otherwise if the State has not ceded jurisdiction, or if the superintendent resides elsewhere within its jurisdiction. (16 Opin. Att. Gen., 468.)

Superintendents of national cemeteries are no part of the Army, but civilians, being required indeed by section 4874, Revised Statutes, to be selected from persons who have been honorably discharged from the military service. They are therefore, of course, not subject to the Articles of War or to trial by court-martial, and for any serious misconduct on the part of a superintendent a removal from office would be the only adequate remedy. (Dig. Opin. J. A. G., p. 929, IV A 3a.)

[3] That Confederate soldiers and sailors may be buried in national cemeteries. (See appropriation act, Aug. 24, 1912, 37 Stat. 439–440.)

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1307. *Record of names and places of burial.*—The Secretary of War shall cause to be preserved in the records of his Department the names and places of burial of all soldiers for whom such headstones shall have been erected by authority of this or former acts. *Id.*

1308. *Burial in national cemeteries—Soldiers, sailors and marines entitled thereto.*—All soldiers, sailors, or marines, dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment. *Sec. 4878, R. S.*

1309. *Same—Army nurses.*—Army nurses, honorably discharged from their service as such, may be buried in any national cemetery, and, if in a destitute condition, free of cost. The Secretary of War is authorized to issue certificates to those Army nurses entitled to such burial. *Sec. 4878, R. S., as amended by Act of Mar. 3, 1897 (29 Stat. 625).*

1310. *Jurisdiction.*—From the time any State legislature shall have given, or shall hereafter give, the consent of such State to the purchase by the United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section eight, article one, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same. *Sec. 4882, R. S.*

OFFENSES AGAINST REAL PROPERTY.

1311. *Cutting or injuring timber, etc.*—Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.[1] *Sec. 50, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1098).*

[1] Section 5388 of the Revised Statutes, as amended by the act of June 4, 1888, which forbids the cutting or wanton destruction of timber upon military or Indian reservations, does not apply to one who removes and uses for building purposes timber which has been cut on an Indian reservation by another person without his aid and encouragement. (U. S. *v.* Konkapot, 43 Fed. Rep., 64.) Persons cutting trees growing on the lands of the United States, without permission, are mere trespassers, performing an illegal act, and acquire no right, title, or interest in the wood by reason of the severance. (No. Pac. R. R. Co. *v.* Lewis, 162 U. S., 366; Schulenberg *v.* Harriman, 21 Wall., 44.)

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1312. *Cutting and chipping trees to secure pitch, etc.*—Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both. *Sec. 51, id.*

1313. *Removal, destruction, etc., of section corners or meander posts.*—Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both. *Sec. 57, id., 1099.*

1314. *Breaking fences, driving cattle, etc., upon reservations.*—Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other live stock upon any such lands for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both: *Provided*, That nothing in this section shall be construed to apply to unreserved public lands. *Sec. 56, id.*

1315. *Trespass upon or injury to mines, torpedoes, fortifications, etc.*—Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully

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interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. *Sec. 44, id., 1097.*

1316. *Setting fire to or injuring arsenals, armories, magazines, etc.*—Whoever shall maliciously set fire to, burn, or attempt to burn, or by any means destroy or injure, or attempt to destroy or injure, any arsenal, armory, magazine, ropewalk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn, or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel built, building, or undergoing repair, or any light-house, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing, or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval, or victualing stores, arms, or other munitions of war, shall be fined not more than five thousand dollars and imprisoned not more than twenty years. *Sec. 286, id., 1144.*

1317. *Entry upon reservation for a purpose prohibited by law.*—Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. *Sec. 45, id., 1097.*

1317¼. *National defense—Penalty for obtaining unlawful information by photographs, sketches, plans, etc., and for disclosing plans, etc.*—That whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or constructed or in process of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents, and whether situated within the United States or in any place noncontiguous to but subject to the jurisdiction thereof; or whoever, when lawfully or unlawfully upon any vessel, or in or near any such place, without proper authority, obtains, takes, or makes, or attempts to obtain, take, or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected with the national defense to which he is not entitled; or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge, know-

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ing the same to have been so obtained, taken, or made; or whoever, having possession of or control over any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and without proper authority, communicates or attempts to communicate the same to any person not entitled to receive it, or to whom the same ought not, in the interest of the national defense, be communicated at that time; or whoever, being lawfully intrusted with any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and in breach of his trust, so communicates or attempts to communicate the same, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. *Sec. 1, Act of Mar. 3, 1911 (36 Stat., 1084).*

1317½. *Same—Punishment for communicating to foreign governments, etc.*—That whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any document, sketch, photograph, photographic negative, plan, model, or knowledge so obtained, taken, or made, or so intrusted to him, shall be imprisoned not more than ten years. *Sec. 2, id., 1085.*

1317¾. *Same—Jurisdiction for offenses on high seas and in the Philippines.*—That offenses against the provisions of this Act committed upon the high seas or elsewhere outside of a judicial district shall be cognizable in the district where the offender is found or into which he is first brought; but offenses hereunder committed within the Philippine Islands shall be cognizable in any court of said islands having original jurisdiction of criminal cases, with the same right of appeal as is given in other criminal cases where imprisonment exceeding one year forms a part of the penalty; and jurisdiction is hereby conferred upon such courts for such purpose. *Sec. 3, id.*

1318. *Employment of force to remove unlawful inclosures.*—That the President is hereby authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosure of any of said lands, and to employ civil or military force as may be necessary for that purpose. *Sec. 5, Act of Feb. 25, 1885 (23 Stat. 322).*

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CHAPTER XXXI.

THE MILITIA—TERRITORIAL AND DISTRICT MILITIA.

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THE MILITIA.

1319. *Right to bear arms.*—A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.[1] *Constitution of the United States, second amendment.*

1320. *Repeal of certain sections of the Revised Statutes.*—Sections sixteen hundred and twenty-five to sixteen hundred and sixty, both included, of title sixteen of the Revised Statutes, and section two hundred and thirty-two thereof, relating to the militia, are hereby repealed. *Sec. 25, Act of Jan. 21, 1903 (32 Stat. 780).*

1321. *Defining terms.*—Whenever the words "State or Territory" are used in the "Act to promote the efficiency of the militia, and for other purposes," approved January twenty-first, nineteen hundred and three, as amended, they shall be held to apply to and include the District of Columbia. *Sec. 74, Act of Feb. 18, 1909 (35 Stat. 636).*

(This paragraph is added to the act of March 1, 1889, 25 Stat. 772, as section 64.)

1322. *Composition of—the organized.*—The militia shall consist of every able-bodied male citizen of the respective States and Territories and the District of Columbia, and every able-bodied male of

[1] The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the National Government. (U. S. *v.* Cruikshank, 92 U. S., 542.)

The right voluntarily to associate together as a military company or organization, or to drill or parade with arms, without and independent of an act of Congress or law of the State authorizing the same, is not an attribute of national citizenship. Military organization and military drill and parade under arms are subjects especially under the control of the government of every country. They can not be claimed as rights independent of law and are not privileges and immunities of citizens of the United States. State governments, unless restrained by their own constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform the duties or exercise the privileges of citizens of the United States; and have also the power to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power, by the States, is necessary to the public peace, safety, and good order. (Presser *v.* Illinois, 116 U. S. 252, 267; U. S. *v.* Cruikshank, 92 U. S., 542; New York *v.* Miln, 11 Pet., 102, 139.)

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foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age, and shall be divided into two classes: The organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective States or Territories; the remainder to be known as the Reserve Militia: *Provided*, That the provisions of this Act and of section sixteen hundred and sixty-one, Revised Statutes, as amended, shall apply only to the militia organized as a land force. *Sec. 1, Act of May 27, 1908 (35 Stat. 399).*

(This paragraph amends and reenacts section 1 of the act of January 21, 1903, 32 Stat. 775.)

1323. *Exemptions.*—The Vice-President of the United States, the officers, judicial and executive, of the Government of the United States, the members and officers of each House of Congress, persons in the military or naval service of the United States, all custom-house officers, with their clerks, postmasters and persons employed by the United States in the transmission of the mail, ferrymen employed at any ferry on a post road, artificers and workmen employed in the armories and arsenals of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, and all persons who are exempted by the laws of the resepctive States or Territories shall be exempted from militia duty, without regard to age. *Sec. 2, Act of Jan. 21, 1903 (32 Stat. 775).*

1324. *The same.*—Nothing in this Act shall be construed to require or compel any member of any well-recognized religious sect or organization at present organized and existing whose creed forbids its members to participate in war in any form, and whose religious convictions are against war or participation therein, in accordance with the creed of said religious organizations, to serve in the militia or any other armed or volunteer force under the jurisdiction and authority of the United States. *Sec. 2, Act of Jan. 21, 1903 (32 Stat. 775).*

1325. *Organization.*—The regularly enlisted, organized, and uniformed active militia in the several States and Territories and the District of Columbia who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes of the United States, as amended, whether known and designated as National Guard, militia, or otherwise, shall constitute the organized militia. On and after January twenty-first, nineteen hundred and ten, the organization, armament, and discipline of the organized militia in the several States and Territories and the District of Columbia shall be the same as that which is now or may hereafter

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be prescribed for the Regular Army of the United States, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. *Sec. 2, Act of May 27, 1908 (35 Stat. 399).*

(This paragraph, with paragraphs 1326, 1327, and 1357, amends and reenacts section 3 of the act of January 21, 1903, 32 Stat. 775.)

1326. *The same.*—The President of the United States in time of peace may, by order, fix the minimum number of enlisted men in each company, troop, battery, signal corps, engineer corps, and hospital corps. *Sec. 2, id., 400.*

(This paragraph, with paragraphs 1325, 1327, and 1357, amends and reenacts section 3 of the act of January 21, 1903, 32 Stat. 775.)

1327. *The same.*—Any corps of artillery, cavalry, and infantry existing in any of the States at the passage of the Act of May eighth, seventeen hundred and ninety-two, which, by the laws, customs, or usages of the said States, have been in continuous existence since the passage of said Act, under its provisions and under the provisions of section two hundred and thirty-two and sections sixteen hundred and twenty-five to sixteen hundred and sixty, both inclusive, of title sixteen of the Revised Statutes of the United States, relating to the militia, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law, in like manner as the other militia. *Sec. 2, id.*

(This paragraph, with paragraphs 1325, 1326, and 1357, amends and reenacts section 3 of the act of January 21, 1903, 32 Stat. 775. See sec. 25, act of Jan. 21, 1903 (32 Stat. 780), which repeals the sections of the Revised Statutes above mentioned.)

ENCAMPMENTS AND MANEUVERS.

1328. *Joint encampments with the Regular Army.*—The Secretary of War is authorized to provide for participation by any part of the organized militia of any State, Territory, or the District of Columbia, on the request of the governor of a State or Territory, or the commanding-general of the militia of the District of Columbia, in the encampments, maneuvers, and field instruction of any part of the Regular Army, at or near any military post or camp or lake or sea-coast defenses of the United States. In such case the organized militia so participating shall receive the same pay, subsistence, and transportation as is provided by law for the officers and men of the Regular Army, and no part of the sums appropriated for the support of the Regular Army shall be used to pay any part of the expenses of the organized militia of any State or Territory or the District of Columbia, while engaged in joint encampments, maneuvers, and field instruction of the Regular Army and militia: *Provided*, That the Secretary of War is authorized, under requisition of the governor of a State or Territory or the command-

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ing-general of the militia of the District of Columbia, to pay to the quartermaster-general, or such other officer of the militia as may be duly designated and appointed for the purpose, so much of its allotment, under the annual appropriation authorized by section sixteen hundred and sixty-one, Revised Statutes, as amended, as shall be necessary for the payment, subsistence, transportation, and other expenses of such portion of the organized militia as may engage in encampments, maneuvers, and field instruction with any part of the Regular Army at or near any military post or camp or lake or seacoast defenses of the United States, and the Secretary of War shall forward to Congress, at each session next after said encampments, a detailed statement of the expense of such encampments and maneuvers: *Provided*, That the command of such military post or camp and the officers and troops of the United States there stationed shall remain with the regular commander of the post without regard to the rank of the commanding or other officers of the militia temporarily so encamped within its limits or in its vicinity: *Provided further*, That except as herein specified the right to command during such joint encampments, maneuvers, and field instruction shall be governed by the rules set out in Articles One hundred and twenty-two and One hundred and twenty-four of the rules and articles for the government of the armies of the United States. *Act of Apr. 21, 1910 (36 Stat. 329)*.

(This paragraph amends and reenacts section 15 of the act of January 21, 1903, 32 Stat. 777, as amended by section 9 of the act of May 27, 1908, 35 Stat. 402. It also includes the provision of the act of April 23, 1904, 33 Stat. 265, which prohibited the use of any part of the Army appropriation to pay any of the expenses of the Organized Militia while engaged in joint encampments, maneuvers, etc.)

1329. *Disbursing appropriation; statement of expenses.*—The sums appropriated for the organized militia for such joint encampment, maneuvers, and field instruction shall be disbursed as, and for that purpose shall constitute, one fund; and the Secretary of War shall forward to Congress, at each session next after said encampment, a detailed statement of the expenses of such encampments and maneuvers. *Sec. 9, Act of May 27, 1908 (35 Stat. 402)*.

(This paragraph, with paragraph 1328, amends and reenacts section 15 of the act of January 21, 1903, 32 Stat., 777. And see paragraph 1360.)

1330. *Beginning of pay.*—Hereafter when any portion of the organized militia of any State, Territory, or the District of Columbia participates in the encampment, maneuvers, and field instruction of any part of the Regular Army, under the provisions of section fifteen of the Act of January twenty-first, nineteen hundred and three, they may, after being duly mustered by an officer of the Regular Army, be paid at any time after such muster for the period from the date

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of leaving the home rendezvous to date of return thereto as determined in advance, both dates inclusive, and such payment, if otherwise correct, shall pass to the credit of the paymaster making the same. *Act of June 12, 1906 (34 Stat. 249).*

1331. *Practice marches, camps of instructions and drills.*—Each State or Territory furnished with material of war under the provisions of this or former Acts of Congress shall, during the year next preceding each annual allotment of funds, in accordance with section sixteen hundred and sixty-one of the Revised Statutes, as amended, have required every company, troop, and battery in its organized militia not excused by the governor of such State or Territory to participate in practice marches or go into camp of instruction at least five consecutive days, and to assemble for drill and instruction at company, battalion, or regimental armories or rendezvous or for target practice not less than twenty-four times, and shall also have required during such year an inspection of each such company, troop, and battery to be made by an officer of such militia or an officer of the Regular Army. *Sec. 18, Act of Jan. 21, 1903 (32 Stat. 778).*

1332. *Details of officers and enlisted men of Regular Army.*—Upon the application of the governor of any State or Territory furnished with material of war under the provisions of this Act, or former laws of Congress, the Secretary of War may, in his discretion, detail one or more officers or enlisted men of the Army to report to the governor of such State or Territory for duty in connection with the organized militia. All such assignments may be revoked at the request of the governor of such State or Territory or at the pleasure of the Secretary of War. *Sec. 11, Act of May 27, 1908 (35 Stat. 403).*

(This paragraph, with paragraphs 1337 and 1338, amends and reenacts section 20 of the act of January 21, 1903, 32 Stat. 779.)

1333. *Officers of the Regular Army as inspectors and instructors.*—Upon the request of the governors of the several States and Territories concerned, the President may detach officers of the active list of the Army from their proper commands for duty as inspectors and instructors of the Organized Militia, as follows, namely: Not to exceed one officer for each regiment and separate battalion of infantry, or its equivalent of other troops: *Provided*, That line officers detached for duty with the Organized Militia under the provisions hereof, together with those detached from their proper commands, under the provisions of law, for other duty the usual period of which exceeds one year, shall be subject to the provisions of section twenty-seven of the Act approved February second, nineteen hundred and one, with reference to details to the staff corps, but the total number of detached officers hereby made subject to these provisions shall not

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exceed two hundred: *And provided further*, That the number of such officers detached from each of the several branches of the line of the Army shall be in proportion to the authorized commissioned strength of that branch; they shall be of the grades first lieutenant to colonel, inclusive, and the number detached from each grade shall be in proportion to the number in that grade now provided by law for the whole Army. The vacancies hereby caused or created in the grade of second lieutenant shall be filled in accordance with existing law, one-half in each fiscal year until the total number of vacancies shall have been filled. *Act of Mar. 3, 1911 (36 Stat. 1045)*.

1334. *Officers of the militia attending United States military schools.*—Whenever any officer or enlisted man of the organized militia shall upon the recommendation of the governor of any State, Territory, or the commanding general of the District of Columbia militia, and when authorized by the President, attend and pursue a regular course of study at any military school or college of the United States, such officer or enlisted man shall receive from the annual appropriation for the support of the Army, the same travel allowances and quarters or commutation of quarters to which an officer or enlisted man of the Regular Army would be entitled for attending such school or college under orders from proper military authority; such officer shall also receive commutation and subsistence at the rate of one dollar per day and each enlisted man such subsistence as is furnished to an enlisted man of the Regular Army while in actual attendance upon a course of instruction. *Sec. 10, Act of May 27, 1908 (35 Stat. 402)*.

(This paragraph amends and reenacts section 16 of the act of January 21, 1903, 32 Stat. 778.)

1335. *Returns of strength of Organized Militia; reports to Congress.*—There shall be appointed in each State, Territory, and District of Columbia, an Adjutant-General, who shall perform such duties as may be prescribed by the laws of such State, Territory, and District, respectively, and make returns to the Secretary of War, at such times and in such form as he shall from time to time prescribe, of the strength of the organized militia, and also make such reports as may from time to time be required by the Secretary of War. That the Secretary of War shall, with his annual report of each year, transmit to Congress an abstract of the returns and reports of the adjutants-general of the States, Territories, and the District of Columbia, with such observations thereon as he may deem necessary for the information of Congress. *Sec. 12, Act of Jan. 21, 1903 (32 Stat. 776)*.

(See paragraphs 1372 and 1373.)

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1336. *Report of expenditures.*—The Secretary of War shall annually submit to Congress a report of expenditures made by him in the execution of the requirements of this section. *Sec. 8, Act of May 27, 1908 (35 Stat. 402).*

(This paragraph, with paragraphs 1361–1363, amends and reenacts section 13 of the act of January 21, 1903, 32 Stat. 777.)

1337. *Consultation board of militia officers.*—The Secretary of War is hereby authorized to appoint a board of five officers on the active list of the organized militia so selected as to secure, as far as practicable, equitable representation to all sections of the United States, and which shall, from time to time, as the Secretary of War may direct, proceed to Washington, District of Columbia, for consultation with the Secretary of War respecting the condition, status, and needs of the whole body of the organized militia. Such officers shall be appointed for the term of four years unless sooner relieved by the Secretary of War. *Sec. 11, id., 403.*

(This paragraph, with paragraphs 1332 and 1338, amends and reenacts section 20 of the act of Jan. 21, 1903 (32 Stat. 779.)

1338. *The same—Traveling expenses.*—The actual and necessary traveling expenses of the members of the board, together with a per diem to be established by the Secretary of War, shall be paid to the members of the board. The expenses herein authorized, together with the necessary clerical and office expenses of the division of militia affairs in the office of the Secretary of War, shall constitute a charge against the whole sum annually appropriated under section sixteen hundred and sixty-one, Revised Statutes, as amended, and shall be paid therefrom, and not from the allotment duly apportioned to any particular State, Territory, or the District of Columbia; and a list of such expenses shall be submitted to Congress annually by the Secretary of War in connection with his annual report. *Sec. 11, id.*

(This paragraph, with paragraphs 1332 and 1337, amends and reenacts section 20 of the act of January 21, 1903. 32 Stat. 779.)

IN THE SERVICE OF THE UNITED STATES.

1339. *Calling forth the militia.*—Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose, through the governor of the respective State or Territory, or

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through the commanding general of the militia of the District of Columbia, from which State, Territory, or District such troops may be called, to such officers of the militia as he may think proper.[1] *Sec. 3, id., 400.*

(This paragraph amends and reenacts section 4 of the act of January 21, 1903, 32 Stat. 776.)

1340. *The same.*—When the military needs of the Federal Government arising from the necessity to execute the laws of the Union, suppress insurrection, or repel invasion, can not be met by the regular forces, the organized militia shall be called into the service of the United States in advance of any volunteer force which it may be determined to raise. *Sec. 4, id.*

(This paragraph, with paragraphs 1344 and 1345, amends and reenacts section 5 of the act of January 21, 1903, 32 Stat. 776.)

1341. *The same.*—When the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population. *Sec. 6, Act of Jan. 21, 1903 (32 Stat. 776).*

1342. *The same—subject to the rules and articles of war.*—The militia, when called into the actual service of the United States, shall be subject to the same Rules and Articles of War as the regular troops of the United States. *Sec. 9, id.*

1343. *Membership of courts-martial.*—The majority membership of courts-martial for the trial of officers or men of the militia when in the service of the United States shall be composed of militia officers. *Sec. 6, Act of May 27, 1908 (35 Stat. 401).*

(This paragraph amends and reenacts section 8 of the act of January 21, 1903. 32 Stat. 776.)

1344. *Term of service.*—Whenever the President calls forth the organized militia of any State, Territory, or of the District of Columbia, to be employed in the service of the United States, he may specify in his call the period for which such service is required, and the militia so called shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by order of the President. *Sec. 4, id., 400.*

(This paragraph, with paragraphs 1340 and 1345, amends and reenacts section 5 of the act of January 21, 1903, 32 Stat. 776.)

1345. *The same.*—No commissioned officer or enlisted man of the organized militia shall be held to service beyond the term of his existing commission or enlistment. *Sec. 4, id.*

(This paragraph, with paragraphs 1340 and 1344, amends and reenacts section 5 of the act of January 21, 1903, 32 Stat. 776.)

[1] See *Martin* v. *Mott*, 12 Wheat. 19; *Houston* v. *Moore*, 5 Wheat. 1.

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1346. *Enlistment and muster.*—Every officer and enlisted man of the militia who shall be called forth in the manner hereinbefore prescribed, shall be mustered for service without further enlistment, and without further medical examination previous to such muster, except for those States and Territories which have not adopted the standard of medical examination prescribed for the Regular Army: *Provided, however,* That any officer or enlisted man of the militia who shall refuse or neglect to present himself for such muster, upon being called forth as herein prescribed, shall be subject to trial by court-martial and shall be punished as such court-martial may direct. *Sec. 5, id., 401.*

(This paragraph amends and reenacts section 7 of the act of January 21, 1903, 32 Stat. 776.)

PAY AND EMOLUMENTS.

1347. *Pay and allowances.*—The militia, when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. *Sec. 10, Act of Jan. 21, 1903 (32 Stat. 776).*

1348. *Pensions.*—When any officer, noncommissioned officer, or private of the militia is disabled by reason of wounds or disabilities received or incurred in the service of the United States he shall be entitled to all the benefits of the pension laws existing at the time of his service, and in case such officer, noncommissioned officer, or private dies in the service of the United States or in returning to his place of residence after being mustered out of such service, or at any time, in consequence of wounds or disabilities received in such service, his widow and children, if any, shall be entitled to all the benefits of such pension laws. *Sec. 22, id., 779.*

1349. *Beginning of pay.*—When the militia is called into the actual service of the United States, or any portion of the militia is called forth under the provisions of this Act, their pay shall commence from the day of their appearing at the place of company rendezvous, but this provision shall not be construed to authorize any species of expenditure previous to arriving at such places of rendezvous which is not provided by existing laws to be paid after their arrival at such places of rendezvous. *Sec. 7, Act of May 27, 1908 (35 Stat. 401).*

(This paragraph amends and reenacts section 11 of the act of January 21, 1903, 32 Stat. 776.)

1350. *Purchase of travel rations.*—Officers of the organized militia who may hereafter be furnished, under proper authority, with funds for the purchase of coffee, or other components of the travel ration for the use of their respective commands, shall not be required to furnish bonds for the safe-keeping and disbursement of the same. *Act of May 11, 1908 (35 Stat. 117).*

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ARMAMENT AND EQUIPMENT.

1351. *Permanent annual appropriation.*—The sum of two million dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster stores, and camp equipage for issue to the militia, such appropriation to remain available until expended.[1] *Sec. 1, Act of June 22, 1906 (34 Stat. 449).*

(This paragraph amends and reenacts section 1661 of the Revised Statutes, as amended by the act of June 6, 1900, 31 Stat. 662.)

1352. *The same.*—The permanent annual appropriation made by the act of April twenty-third, eighteen hundred and eight, designated as section sixteen hundred and sixty-one of the Revised Statutes, and which was increased to four hundred thousand dollars by the act of February twelfth, eighteen hundred and eighty-seven, being for the procurement of ordnance and ordnance stores and quartermaster's stores and camp equipage for the use of the militia of the country, shall not lapse with the end of any fiscal year nor be turned into the surplus fund, but shall remain a permanent appropriation and be available for the several States and Territories and District of Columbia until expended as provided in said acts or otherwise disposed of by Congress.[2] *Act of Aug. 18, 1894 (28 Stat. 406).*

(See paragraph 1351.)

1353. *The same.*—Said appropriation shall be apportioned among the several States and Territories, under the direction of the Secretary of War, according to the number of Senators and Representatives to which each State respectively is entitled in the Congress of the United States, and to the Territories and District of Columbia such proportion and under such regulations as the President may prescribe: *Provided, however,* That no State shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least one hundred men for each Senator and Representative to which such State is entitled in the Congress of the United

[1] The appropriation for "providing arms and equipments for the whole body of the militia, either by purchase or manufacture," authorizes the use of the money in the manufacture of arms at the National Armories. (9 Opin. Att. Gen., 16.)

The cost of transporting arms and equipments to the points designated by proper authority for issue to the militia of the several States and Territories and the District of Columbia is an expenditure incident to the object of the appropriation "Arming and equipping the militia," made by the act of February 12, 1887 (24 Stat. 401), and is therefore properly chargeable to it, unless provision is specifically made therefor. (3 Dig. 2d Comp. Dec. 356.)

[2] The States do not, by the existing laws, have an absolute right of property in such arms, and they derive no authority therefrom to sell or dispose of them at pleasure. (14 Opin. Att. Gen., 491.)

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States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury: *Provided also*, That the sums so apportioned among the several States and Territories and the District of Columbia shall be available for the purpose named in section fourteen of the Act of January twenty-first, nineteen hundred and three, for the actual excess of expenses of travel in making the inspections therein provided for over the allowances made for same by law; for the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges; for the hiring of horses and draft animals for the use of mounted troops, batteries, and wagons; for forage for the same and for such other incidental expenses in connection with encampments, maneuvers, and field instruction provided for in sections fourteen and fifteen of the said Act of January twenty-first, nineteen hundred and three, as the Secretary of War may deem necessary.[1] *Sec. 2, Act of June 22, 1906 (34 Stat. 449).*

(This paragraph amends and reenacts section 2 of the act of February 12, 1887, 24 Stat. 402. See paragraph 1351.)

1354. *The same.*—The annual appropriation made by section sixteen hundred and sixty-one, Revised Statutes, as amended, shall be available for the purpose of providing for issue to the organized militia any stores and supplies or publications which are supplied to the Army by any department. Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department, for use of its militia, stores, supplies, material of war, or military publications, such as are furnished to the Army, in addition to those issued under the provisions of this Act, at the price at which they are listed for issue to the Army, with the cost of transportation added, and funds received from such sales shall be credited to the appropriations to which they belong and shall not be covered into the Treasury, but shall be available until expended to replace therewith the supplies sold to

[1] The arms transmitted to the States under the laws which are embodied in sections 1661, 1667, and 1670 of the Revised Statutes are, in contemplation of the provisions thereof, to be held by the States for a specific purpose only, which is pointed out therein; hence, they become invested with nothing more than a qualified property in such arms; and they can not, as a matter of right, and without interfering with the regulations of Congress on a subject over which its authority is paramount, make any disposition or use of such arms which defeats the purpose referred to. (14 Opin. Att. Gen., 491.) Congress, by the act of February 12, 1887 (24 Stat. 401), has provided a system of accountability for the several States in respect to the arms, ammunition, equipage and other public property issued to the States for the use of the militia. (See paragraph 1358.)

For provision of the statutes respecting certain special issues of arms and ammunition to the militia of the States and Territories, see paragraphs 1380 and 1381, post.

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the States and Territories and to the District of Columbia in the manner herein provided. *Sec. 17, Act of Jan. 21, 1903 (32 Stat. 778).*

(See paragraph 1351.)

1355. *The same.*—That hereafter the allotment to any State, Territory, or the District of Columbia, from the annual appropriation made by section sixteen hundred and sixty-one, Revised Statutes, as amended, shall be available for the purposes specified by law only under such conditions as may be prescribed by the Secretary of War to secure effective organizational field or camp service for instruction and generally increased field efficiency on the part of the Organized Militia. *Act of Apr. 27, 1914 (38 Stat. 360).*

(See paragraph 1351.)

1356. *Payment during field or camp service.*—Whenever it shall appear by the report of inspection, which it shall be the duty of the Secretary of War to cause to be made at least once in each year by officers detailed by him for that purpose, that the organized militia of a State or Territory or of the District of Columbia is sufficiently armed, uniformed, and equipped for active duty in the field, the Secretary of War is authorized, on the requision of the governor of such State or Territory, to pay to the quartermaster-general thereof, or to such other officer of the militia of said State as the said governor may designate and appoint for the purpose, so much of its allotment out of the said annual appropriation under section sixteen hundred and sixty-one of the Revised Statutes as amended as shall be necessary for the payment, subsistence, and transportation of such portion of said organized militia as shall engage in actual field or camp service for instruction, and the officers and enlisted men of such militia while so engaged shall be entitled to the same pay, subsistence, and transportation or travel allowances as officers and enlisted men of corresponding grades of the Regular Army are or may hereafter be entitled by law, and the officer so designated and appointed shall be regarded as a disbursing officer of the United States, and shall render his accounts through the War Department to the proper accounting officers of the Treasury for settlement, and he shall be required to give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for the safe-keeping and payment of the public moneys so instrusted to him for disbursement. *Sec. 14, Act of Jan. 21, 1903 (32 Stat. 777).*

(See paragraph 1351.)

1357. *Inspector of small-arms practice.*—In peace and war each organized division of militia may have one inspector of small-arms

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practice with the rank of lieutenant-colonel; each organized brigade of militia one inspector of small-arms practice with the rank of major; each regiment of infantry or cavalry of organized militia one assistant inspector of small-arms practice with the rank of captain, and each separate or unassigned battalion of infantry or engineers or squadron of cavalry of organized militia one assistant inspector of small-arms practice with the rank of first lieutenant. *Sec. 2, Act of May 27, 1908 (35 Stat. 400).*

(This paragraph, with paragraphs 1325, 1326, and 1327, amends and reenacts section 3 of the act of January 21, 1903, 32 Stat. 775.)

1358. *Supply of arms and equipments; accountability.*—The purchase or manufacture of arms, ordnance stores, quartermaster stores, and camp equipage for the militia under the provisions of this Act shall be made under the direction of the Secretary of War, as such arms, ordnance and quartermaster stores, and camp equipage are now manufactured or otherwise provided for the use of the Regular Army, and they shall be receipted for and shall remain the property of the United States, and be annually accounted for by the governors of the States and Territories and by the commanding general of the National Guard of the District of Columbia, for which purpose the Secretary of War shall prescribe and supply the necessary blanks and make such regulations as he may deem necessary to protect the interests of the United States. *Sec. 3, Act of June 22, 1906 (34 Stat. 450).*

(This paragraph amends and reenacts section 3 of the act of February 12, 1887.)

1359. *Accountability for arms and equipment.*—Whenever any property furnished to any State or Territory, or the District of Columbia, as hereinbefore provided, has been lost or destroyed, or has become unserviceable or unsuitable from use in service, or from any other cause, it shall be examined by a disinterested surveying officer of the organized militia, to be appointed by the governor of the State or Territory, or the commanding general of the National Guard of the District of Columbia, to whom the property has been issued, and his report shall be forwarded by said governor or commanding general direct to the Secretary of War, and if it shall appear to the Secretary of War from the record of survey that the property has been lost or destroyed through unavoidable causes, he is hereby authorized to relieve the State from further accountability therefor; if it shall appear that the loss or destruction of property was due to carelessness or neglect or that its loss could have been avoided by the exercise of reasonable care, the money value thereof shall be charged against the allotment to the States under section sixteen hundred and sixty-one of the Revised Statutes as amended. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary

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of War shall direct what disposition, by sale or otherwise, shall be made of them, except unserviceable clothing which shall be destroyed, and if sold the proceeds of such sale shall be covered into the Treasury of the United States. *Sec. 4, id.*

(This paragraph amends section 4 of the act of February 12, 1887, 24 Stat. 402.)

1360. *Ammunition for target practice.*—The troops of the militia encamped at any military post or camp of the United States may be furnished such amounts of ammunition for instruction in firing and target practice as may be prescribed by the Secretary of War, and such instruction in firing shall be carried on under the direction of an officer selected for that purpose by the proper military commander. *Sec. 21, Act of Jan. 21, 1903 (32 Stat. 779).*

1361. *Supply of United States service arms.*—The Secretary of War is hereby authorized to procure, by purchase or manufacture, and issue from time to time to the organized militia, under such regulations as he may prescribe, such number of the United States service arms, together with all accessories and such other accouterments, equipments, uniforms, clothing, equipage, and military stores of all kinds required for the Army of the United States, as are necessary to arm, uniform, and equip all of the organized militia in the several States, Territories, and the District of Columbia, in accordance with the requirements of this Act, without charging the cost or value thereof, or any expense connected therewith, against the allotment of said State, Territory, or the District of Columbia, out of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes as amended, or requiring payment therefor, and to exchange, without receiving any money credit therefor, ammunition or parts thereof suitable to the new arms, round for round, for corresponding ammunition suitable to the old arms heretofore issued to said State, Territory, or the District of Columbia by the United States: *Provided*, That said property shall remain the property of the United States, except as hereinafter provided, and be annually accounted for by the governors of the States and Territories as required by law, and that each State, Territory, and the District of Columbia shall, on receipt of new arms or equipments, turn in to the War Department, or otherwise dispose of in accordance with the directions of the Secretary of War, without receiving any money credit therefor and without expense for transportation, all United States property so replaced or condemned. *Sec. 8, Act of May 27, 1908 (35 Stat. 401).*

(This paragraph, with paragraphs 1336, 1362, and 1363, amends and reenacts section 13 of the act of January 21, 1903, 32 Stat. 777.)

1362. *Clothing allowance.*—When the organized militia is uniformed as above required (see Par. 1361), the Secretary of War is

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authorized to fix an annual clothing allowance to each State, Territory, and the District of Columbia for each enlisted man of the organized militia thereof, and thereafter issues of clothing to such States, Territories, and the District of Columbia shall be in accordance with such allowance, and the governors of the States and Territories and the commanding general of the militia of the District of Columbia shall be authorized to drop from their returns each year as expended clothing corresponding in value to such allowance. The Secretary of War is hereby further authorized to issue from time to time to the organized militia, under such regulations as he may prescribe, small arms and artillery ammunition upon the requisition of the governor, in the proportion of fifty per centum of the corresponding Regular Army allowance, without charge to the State's allotment from the appropriation under section sixteen hundred and sixty-one, Revised Statues, as amended. *Sec. 8, id.*

(This paragraph, with paragraphs 1336, 1361, and 1363, amends and reenacts section 13 of the act of January 21, 1903, 32 Stat. 777.)

1363. *Appropriation.*—To provide means to carry into effect the provisions of this section, the necessary money to cover the cost of procuring, exchanging, or issuing of arms, accouterments, equipments, uniforms, clothing, equipage, ammunition, and military stores to be exchanged or issued hereunder is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That the sum expended in the execution of the purchases and issues provided for in this section shall not exceed the sum of two million dollars in any fiscal year. *Sec. 8, 402.*

(This paragraph, with paragraphs 1336, 1361, and 1362, amends and reenacts section 13 of the act of January 21, 1903, 32 Stat. 777.)

1364. *Field-artillery material.*—For the purpose of procuring field-artillery material for the organized militia of the several States, Territories, and the District of Columbia, without cost to the said States, Territories, or the District of Columbia, but to remain the property of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories or the commanding general of the militia of the District of Columbia, to issue said artillery material to the organized militia; and the sum of five hundred and eighty five thousand dollars is hereby appropriated and made immediately available, for the procurement and issue of the articles constituting the same. *Act of Apr. 23, 1904 (33 Stat. 275).*

1365. *Supplying new types of small arms.*—It shall be the duty of the Secretary of War, whenever a new type of small arm shall have

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been adopted for the use of the Regular Army, and when a sufficient quantity of such arms shall have been manufactured to constitute, in his discretion, an adequate reserve for the armament of any regular and volunteer forces that it may be found necessary to raise in case of war, to cause the organized militia of the United States to be furnished with small arms of the type so adopted, with bayonets and the necessary accouterments and equipments, including ammunition therefor: *Provided*, That such issues shall be made in the manner provided in section thirteen of the Act approved January twenty-first, nineteen hundred and three, entitled "An Act to promote the efficiency of the militia, and for other purposes." *Act of Mar. 2, 1907 (34 Stat. 1174)*.

1366. *Withdrawing material and equipment from armories.*—For the purchase of material, equipment, books of instruction, range finders, and fire-control equipment for the instruction and use of State coast artillery organizations, * * * dollars: *Provided*, That in time of war, or threatened war, such equipment may, in the discretion of the Secretary of War, be withdrawn from armories or other places where it is in use by the State coast artillery organizations, and may be used in the fortifications of the United States. *Act of Mar. 3, 1909 (35 Stat. 750)*.

1367. *Sale of magazine rifles to militia and rifle clubs.*—The Secretary of War is hereby authorized to sell, at the prices at which they are listed for the Army, upon the request of the governors of the several States and Territories, such magazine rifles belonging to the United States as are not necessary for the equipment of the Army and the organized militia, for the use of rifle clubs formed under regulations prepared by the national board for the promotion of rifle practice and approved by the Secretary of War. *Sec. 1, Act of Mar. 3, 1905 (33 Stat. 986)*.

(See paragraph 1354.)

1368. *Sale of ammunition and stores to rifle clubs.*—The Secretary of War is hereby authorized in his discretion to sell to the several States and Territories, as prescribed in section seventeen of the Act approved January twenty-first, nineteen hundred and three, for the use of said clubs, ammunition, ordnance stores, and equipments of the Government standard at the prices at which they are listed for the Army. The practice of the rifle clubs herein provided shall be carried on in conformity to regulations prescribed by the national board for the promotion of rifle practice, approved by the Secretary of War, and the results thereof shall be filed in the office of the Military Secretary of the Army. *Sec. 2, id., 987.*

(By an act dated March 2, 1907, 34 Stat. 1158, the office of the Military Secretary of the Army, referred to in this paragraph, was changed to The Adjutant General's Office. See paragraph 436.)

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1369. *Disposition of proceeds of sale.*—Hereafter whenever articles of government property are sold for cash to any State, Territory, or to the District of Columbia, for the use of the organized militia, thereby ceasing to be the property of the United States, none of the articles so sold shall be received back by any department of the Government upon the basis of allowing any credit therefor, except when such articles form part of the equipment of troops mustered into the service of the United States in time of war. *Sec. 3, Act of June 23, 1910 (36 Stat. 603).*

1370. *Distribution of automatic pistols.*—Whenever in his opinion a sufficient number of automatic pistols of the standard service type, holsters, and pistol-cartridge boxes therefor, shall have been procured and be available for the purpose, the Secretary of War is hereby authorized to issue, on the requisition of the governors of the several States and Territories, or of the commanding general of the Militia of the District of Columbia, such number of standard pistols, holsters, and pistol-cartridge boxes therefor as are required for arming all of the Organized Militia in said States, Territories, and District of Columbia, without charging the cost or value thereof, or any expense connected therewith, against the allotment to said State, Territory, or District of Columbia, out of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes, as amended, or requiring payment therefor, and to exchange, without receiving any money credit therefor, ammunition, or parts thereof, suitable to the new standard pistol, round for round, for corresponding ammunition suitable to the old revolver theretofore issued to said States, Territory, or District by the United States: *Provided*, That the said standard pistols, holsters, and pistol-cartridge boxes therefor shall be receipted for and shall remain the property of the United States and be annually accounted for by the governors of the States and Territories and the commanding general of the Militia of the District of Columbia as now required by law, and that each State, Territory, and District shall, on receipt of the new pistols, holsters, and pistol-cartridge boxes, and ammunition, turn into the Ordnance Department of the United States Army, without receiving any money credit therefor and without expense for transportation, all United States revolvers and ammunition therefor, holsters, and revolver-cartridge boxes now in its possession.

To provide means to carry into effect the foregoing provisions, the necessary money, not to exceed three hundred thousand dollars, to recover the cost of exchanging or issuing the new pistols, ammunition therefor, holsters, and pistol-cartridge boxes to be exchanged or issued hereunder, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated. *Act of Mar. 3, 1911 (36 Stat. 1057).*

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TERRITORIAL AND DISTRICT MILITIA.

1371. *District of Columbia, commander in chief.*—The President of the United States shall be the commander in chief of the militia of the District of Columbia. *Sec. 6, Act of Mar. 1, 1889 (25 Stat. 773).*

1372. *District of Columbia, commanding general.*—There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia, with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. *Sec. 7, id.*

1373. *Army officer detailed as Adjutant General, District of Columbia.*—The President may assign an officer of the Army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this act: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service. *Sec. 9, id.*

1374. *Retired officers details, District of Columbia.*—The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia militia, said retired officer while so detailed to have the active-service pay and allowances of his rank in the Regular Army. *Act of June 6, 1900 (31 Stat. 671).*

1375. *Territorial governor to command militia.*—The executive power of each Territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be commander in chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed. *Sec. 1841, R. S.*

1376. *Laws in effect in Hawaii.* The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States: *Provided,* That sections eighteen hundred and forty-one to eighteen hundred and ninety-one, inclusive, nineteen hundred and ten and nineteen hundred and twelve,

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of the Revised Statutes [providing, among other things, for election of general officers of the militia], and the amendments thereto, and an Act entitled "An Act to prohibit the passage of local or special laws in the Territories of the United States, to limit territorial indebtedness, and for other purposes," approved July thirtieth, eighteen hundred and eighty-six, and the amendments thereto, shall not apply to Hawaii. *Sec. 1, Act of May 27, 1910 (36 Stat. 443).*

(This provision amends and reenacts section 5 of the act entitled "An act to provide a government for the Territory of Hawaii," approved April 18, 1900, 31 Stat. 141.)

1377. *Election of general officers in territories.*—Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide by law. *Sec. 1856, R. S.*

1378. *Appointment of commissioned officers.*—All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory; and all other officers not herein otherwise provided for the governor shall nominate, and by and with the advice and consent of the legislative council of each Territory shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly. *Sec. 1857, R. S.*

1379. *Use of grounds at Washington Barracks.*—National Guard shall have the use of the drill grounds and rifle-range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. *Sec. 47, Act of Feb. 18, 1909 (35 Stat. 634).*

(This has reference to the National Guard of the District of Columbia. The paragraph amends section 44 of the act of March 1, 1889 (25 Stat. 778), by changing the number of the section from 44 to 47.)

1380. *Issue of arms to Territories.*—That the Secretary of War is hereby authorized to cause to be issued to the Territories, and the States bordering thereon, such arms as he may deem necessary for their protection, not to exceed one thousand to said State and Territories each, and ammunition for the same, not to exceed fifty ball cartridges for each arm: *Provided*, That such issues shall be only from arms owned by the Government which have been superseded and no longer issued to the Army: *Provided, however*, That said arms shall be issued only in the following manner, and upon the

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following conditions, namely, upon the requisition of the governors of said States or Territories showing the absolute necessity of arms for the protection of the citizens and their property against Indian raids into said States or Territories, also that militia companies are regularly organized and under control of the governors of said States or Territories to whom said arms are to be issued, and that said governor or governors shall give a good and sufficient bond for the return of said arms or payment for the same at such time as the Secretary of War may designate: *Provided*, That the quota to the States now authorized by law shall not hereby be diminished. *Joint Res. No. 13, July 3, 1876 (19 Stat. 214)*.

1381. *The same.*—That the Secretary of War is hereby authorized to cause to be issued to each of the Territories of the United States (in addition to arms and ammunition the issue of which has been heretofore provided for), such arms not to exceed one thousand in number as he may deem necessary, and ammunition for the same not to exceed fifty ball cartridges for each arm: *Provided*, That such issue shall be only from arms owned by the Government of the United States, which have been superseded and no longer issued to the Army: *And provided further*, That said arms shall be issued only in the following manner, and upon the following conditions, namely, upon the requisition of the governors of said Territories showing the absolute necessity for arms for the protection of citizens and their property against hostile Indians within or of Indian raids into such Territories: *And provided further*, That the said governor or governors of said Territories to whom the said arms may be issued shall give good and sufficient bond or bonds for the return of said arms, or payment therefor, at such time as the Secretary of War may designate, as now provided for by law. *Joint Res. No. 26, June 7, 1878 (20 Stat. 252)*.

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CHAPTER XXXII.

VOLUNTEERS.

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1382. *Land forces of United States, composition of.*—That the land forces of the United States shall consist of the Regular Army, the organized land militia while in the service of the United States, and such volunteer forces as Congress may authorize. *Sec. 1, Act of Apr. 25, 1914 (38 Stat. 347).*

1383. *Volunteer forces, only to be organized during existence of war, etc.*—That the volunteer forces shall be raised, organized, and maintained, as in this Act provided, only during the existence of war, or while war is imminent, and only after Congress shall have authorized the President to raise such a force: *Provided*, That the term of enlistment in the volunteer forces shall be the same as that for the Regular Army, exclusive of reserve periods, and all officers and enlisted men composing such volunteer forces shall be mustered out of the service of the United States as soon as practicable after the President shall have issued a proclamation announcing the termination of the war or the passing of the imminence thereof. *Sec. 2, id.*

1384. *Same—raising, organizing, etc.; President's proclamation for.*—That when volunteer forces are to be raised the President shall issue his proclamation, stating the number of men desired for each arm, corps, and department, within such limits as may be fixed by law, and he shall prescribe such rules and regulations, not inconsistent with the terms of this Act, as may be necessary for the purpose of examining, organizing, and receiving into the service the

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men called for: *Provided*, That the power to organize volunteer forces shall include the power to provide, within such limits as are or may be prescribed by law, the officers and enlisted men of all grades and classes, and the trained nurses, male and female, that may be necessary in the various arms, corps, and departments: *Provided further*, That when three-fourths of the prescribed minimum enlisted strength of any company, troop, or battery, or when three-fourths of the prescribed minimum enlisted strength of each company, troop, or battery comprised in any battalion or regiment of the organized land militia of any State, Territory, or the District of Columbia, organized as prescribed by law and War Department regulations, shall volunteer and be accepted for service in the Volunteer Army as such company, troop, battery, battalion or regiment, such organization may be received into the volunteer forces in advance of other organizations of the same arm or class from the same State, Territory, or District, and the officers in the organized land militia service with such organization may then, within the limits prescribed by law, be appointed by the President, by and with the advice and consent of the Senate, as officers of corresponding grades in the Volunteer Army and be assigned to the same grades in the said organization or elsewhere as the President may direct: *Provided further*, That all enlisted men received into the service in the volunteer forces shall, as far as practicable, be taken from the several States and Territories and the District of Columbia in proportion to the respective populations thereof: *Provided further*, That when the raising of a volunteer force shall have been authorized by Congress, and after the organized land militia of any arm or class shall have been called into the military service of the United States, volunteers of that particular arm or class may be raised and accepted into said service in accordance with the terms of this Act regardless of the extent to which other arms or classes of said militia shall have been called into said service. *Sec. 3, id.*[1]

1385. *Same—subject to laws, regulations, etc., governing Regular Army.*—That the volunteer forces shall be subject to the laws, orders, and regulations governing the Regular Army in so far as such laws,

[1] Under the authority conferred by the acts of April 20, and April 22, 1898, and in pursuance of the declaration of war with the Kingdom of Spain contained in the act of April 25, 1898, a call was addressed to the governors of the several States for a force of 125,000 volunteers. (G. O. 30, A. G. O. 1898.) For regulations respecting the enrollment, armament, and equipment of the volunteer forces thus called into the service of the United States, see General Orders 26, 31, 33, and 41, A. G. O. of 1898.

Section 6 of the act of April 22, 1898, conferred authority upon the President to organize companies, troops, battalions, or regiments, possessing special qualifications, from the nation at large, not to exceed three thousand men, under such rules and regulations, including the appointment of the officers thereof, as may be prescribed by the Secretary of War. The act of May 11, 1898 (30 Stat. 405), authorized the organization of "a volunteer brigade of

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orders, and regulations are applicable to officers or enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law; and no distinction shall be made between the Regular Army, the organized militia while in the military service of the United States, and the volunteer forces in respect to promotion or to the conferring upon officers or enlisted men of brevet rank, medals of honor, certificates of merit, or other rewards for distinguished service, nor in respect to the eligibility of any officer of said Army, militia, or volunteer forces for service upon any court-martial, court of inquiry, or military commission: *Provided*, That the organization of all units of the line and of the signal troops of the volunteer forces shall be the same as that prescribed by law and regulations for the corresponding units of the Regular Army: *Provided further*, That when military conditions so require the President may organize the land forces of the United States into brigades and divisions and such higher units as he may deem necessary, and the composition of units higher than the regiment shall be as he may prescribe: *Provided further*, That to each regiment of Infantry, Cavalry, and Artillery, and to each battalion of Engineers and Signal Corps troops organized under this Act, there shall be attached the same personnel of the Medical Department as are attached to like organizations of the Regular Army: *Provided further*, That the organization of the coast defenses, of machine-gun detachments, establishments of the Medical Department, remount depots, military trains, secret-service agencies, military prisons, lines of communication, including their supply depots, and of other adjuncts that may be necessary in the prosecution of war, and the organization of which is not otherwise provided for by law, shall be as the President may from time to time direct. *Sec. 4, id.*

1386. *Same—President to appoint officers of.*—That except as otherwise provided herein the President is authorized, by and with the advice and consent of the Senate, to appoint all volunteer officers required by this Act, but the number and grade of such officers shall not exceed the number and grade of like officers provided for a like

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engineers from the nation at large, to consist of not more than three regiments and not more than three thousand five hundred men, possessing the special qualifications necessary for engineer troops, under such rules and regulations, including the appointment of the officers thereof, as may be prescribed by the Secretary of War." By the same enactment the organization of "an additional volunteer force of not exceeding ten thousand enlisted men possessing immunity from disease incident to tropical climates" was also authorized. The officers of these forces were to be appointed by the President with the advice and consent of the Senate, and they were not apportioned among the States and Territories, as required in section 5 of the act of April 22, 1898. The act of May 18, 1898 (30 Stat. 418), authorized the formation of a volunteer signal corps. This statute contained the requirement that "two-thirds of all officers below the rank of major and a like proportion of the enlisted men shall be skilled electricians or telegraph operators."

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force of the Regular Army: *Provided*, That all appointments below the grade of brigadier general in the line of the volunteer forces shall be by commission in an arm of the service and not by commission in any particular regiment; and officers in each arm of the service shall be assigned to organizations of that arm, and transferred from one organization to another in that arm, as the interests of the service may require, by orders from the Secretary of War: *Provided further*, That no officer above the grade of colonel shall be appointed under the provisions of this Act. *Sec. 5, id., 348.*

1387. *Same—staff officers for—appointment of.*—That to provide the staff officers that will be necessary in the various staff corps and departments in time of war or while war is imminent, and that are not otherwise provided for in this Act, the President is authorized to appoint, by and with the advice and consent of the Senate, such number of volunteer staff officers of grades authorized by law for the Regular Army as he may find necessary for such corps and departments: *Provided*, That the total number of such staff officers so appointed, including all such officers of the organized militia called into the military service of the United States, shall not exceed the ratio of one officer to two hundred enlisted men for all militia and volunteer forces called into the military service of the United States: *Provided further*, That the number of volunteer staff officers appointed in any grade in the various staff corps and departments shall not exceed in any staff corps or department the proportionate strength of regular officers of the corresponding grade as established by law for the corresponding staff corps or department of the Regular Army: *Provided further*, That the President may appoint, by and with the advice and consent of the Senate, volunteer chaplains at the rate of one for each regiment of Volunteer Infantry, Cavalry, and Field Artillery, and one for every twelve companies of Volunteer Coast Artillery raised, with rank corresponding to that established by law for chaplains in the Regular Army. *Sec. 6, id.*

1388. *Same—officers for may be appointed from Regular Army.*—That in appointing the volunteer officers authorized by this Act the President may select them from the Regular Army, from those duly qualified and registered pursuant to section twenty-three[1] of

[1] *List of eligibles for commissions.*—For the purpose of securing a list of persons specially qualified to hold commissions in any volunteer force which may hereafter be called for and organized under the authority of Congress, other than a force composed of organized militia, the Secretary of War is authorized from time to time to convene boards of officers at suitable and convenient army posts in different parts of the United States, who shall examine as to their qualifications for the command of troops or for the performance of staff duties all applicants who shall have served in the Regular Army of the United States, in any of the volunteer forces of the United States, or in the organized militia of any State or Territory or District of Columbia, or who, being a citizen of the United States, shall have attended or pursued a regular

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the Act of Congress approved January twenty-first, nineteen hundred and three, from the country at large, from the organized land militia of the District of Columbia, and, upon the recommendation of the various governors, from the organized land militia of the several States and Territories in proportion, as far as practicable, to their respective populations, and as far as compatible with the interests of the military service, from the localities from which the troops with which the officers appointed upon said recommendation are to serve shall have been recruited: *Provided*, That in appointments from the country at large preference shall be given those who shall have had honorable service in the Regular Army, the National Guard, or the volunteer forces, or who shall have been graduated from educational institutions in which military instruction is compulsory: *Provided further*, That at the same time, not to exceed one Regular Army officer shall hold a volunteer commission in any one battalion of volunteer engineers or signal troops, or in any one battalion of Volunteer Field Artillery; and not to exceed four Regular Army officers shall, at the same time, hold commissions in any one regiment of Volunteer Cavalry, Field Artillery, or Infantry, or in any twelve companies of Coast Artillery, including their field and staff: *And provided further*, That Regular Army officers appointed as officers of Volunteers under this Act shall not thereby vacate their

course of instruction in any military school or college of the United States Army, or shall have graduated from any educational institution to which an officer of the Army or Navy has been detailed as superintendent or professor pursuant to law after having creditably pursued the course of military instruction therein provided. Such examinations shall be under rules and regulations prescribed by the Secretary of War, and shall be especially directed to ascertain the practical capacity of the applicant. The record of previous service of the applicant shall be considered as a part of the examination. Upon the conclusion of each examination the board shall certify to the War Department its judgment as to the fitness of the applicant, stating the office, if any, which it deems him qualified to fill, and, upon approval by the President, the names of the persons certified to be qualified shall be inscribed in a register to be kept in the War Department for that purpose. The persons so certified and registered shall, subject to a physical examination at the time, constitute an eligible class for commissions pursuant to such certificates in any volunteer force hereafter called for and organized under the authority of Congress, other than a force composed of organized militia, and the President may authorize persons from this class, to attend and pursue a regular course of study at any military school or college of the United States other than the Military Academy at West Point and to receive from the annual appropriation for the support of the Army the same allowances and commutations as provided in this Act for officers of the organized militia: *Provided*, That no person shall be entitled to receive a commission as a second lieutenant after he shall have passed the age of thirty; as first lieutenant after he shall have passed the age of thirty-five; as captain after he shall have passed the age of forty; as major after he shall have passed the age of forty-five; as lieutenant-colonel after he shall have passed the age of fifty, or as colonel after he shall have passed the age of fifty-five: *And provided further*, That such appointments shall be distributed proportionately as near as may be, among the various States contributing such volunteer force: *And provided*, That the appointments in this section provided for shall not be deemed to include appointments to any office in any company, troop, battery, battalion, or regiment of the organized militia which volunteers as a body or the officers of which are appointed by the governor of a State or Territory. *Sec. 23, Act of Jan. 21, 1903* (*32 Stat. 779*).

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Regular Army commissions nor shall they be prejudiced in their relative or lineal standing therein by reason of their service under their volunteer commissions. *Sec. 7, id., 349.*

1389. *Same—vacancies in Regular Army caused by appointment of officers of in volunteer forces.*—That the temporary vacancies created in any grade not above that of colonel among the commissioned personnel of any arm, staff corps, or department of the Regular Army, through appointments of officers thereof to higher volunteer rank, shall be filled by temporary promotions, according to seniority in rank of officers holding commissions in the next lower grade in said arm, staff corps, or department; and all temporary vacancies created in any grade by temporary promotions shall in like manner be filled from, and thus create temporary vacancies in, the next lower grade; and the vacancies that remain thereafter in said arm, staff corps, or department, that can not be filled by temporary promotions, as prescribed in this section, may be filled by the temporary appointment of officers of such number and grade or grades as shall maintain said arm, corps, or department at the full commissioned strength authorized by law: *Provided*, That in the Staff Corps and departments subject to the provisions of sections twenty-six and twenty-seven of the Act of Congress approved February second, nineteen hundred and one, and Acts amendatory thereof, temporary vacancies that can not be filled by temporary promotions as hereinbefore prescribed shall be filled by temporary details made in the manner prescribed in said sections twenty-six and twenty-seven and Acts amendatory thereof, and the resulting temporary vacancies in the branches of the Army from which the details are so made shall be filled as hereinbefore in this section prescribed: *Provided*, That officers temporarily promoted or appointed under the terms of this section shall be so promoted or appointed by the President, by and with the advice and consent of the Senate, for terms that shall not extend beyond the termination of the war or, if war shall not occur, beyond the passing of the imminence thereof, as defined by the President's proclamation, and upon the expiration of said terms said officers shall be discharged from the positions held by them under their temporary promotions or appointments: *Provided further*, That officers temporarily promoted under the provisions of this section shall not vacate their permanent commissions, nor shall they be prejudiced in their lineal or relative standing in the Regular Army under permanent commissions, by reason of their services under temporary commissions authorized by this section. *Sec. 8, id.*

1390. *Same—returns and muster rolls of.*—That all returns and muster rolls of organizations of the volunteer forces and of militia organizations while in the service of the United States shall be rendered to The Adjutant General of the Army, and upon the muster

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out of such organizations the records pertaining to them shall be transferred to and filed in The Adjutant General's Office. And regimental and all other medical officers serving with volunteer troops, or with militia organizations in the service of the United States, in the field or elsewhere, shall keep a daily record of all soldiers reported sick or wounded, as shown by the morning calls or reports, and shall deposit such reports with other reports provided for in this section, in The Adjutant General's Office, as provided for herein for other reports, returns, and muster rolls. *Sec. 9, id., 950.*

1391. *Same—recruiting and maintenance of in time of War, etc.*—That in time of war or while war is imminent all organizations of the land forces in the military service of the United States shall be recruited and maintained as near their prescribed strength as practicable. For this purpose the necessary rendezvous and depots shall be established by the Secretary of War for the enlistment and training of all recruits, and in order that officers may be available for recruiting duty the President is authorized, by and with the advice and consent of the Senate, to appoint officers of Volunteers of the proper arm of the service, additional to those elsewhere herein authorized, in numbers not to exceed at the rate of one major, four captains, five first lieutenants, and five second lieutenants for each organized regiment of Cavalry, Field Artillery, or Infantry, each three battalions of Engineers, or each twelve companies of Coast Artillery; that for purposes of instruction and discipline the troops at recruit depots herein authorized may be organized into companies and battalions, at the discretion of the Secretary of War, with noncommissioned officers and privates of such grades and numbers as may be prescribed by the President. The recruit rendezvous and recruit depots herein prescribed shall be under the direct control of the Secretary of War, and shall render their reports and returns to The Adjutant General of the Army: *Provided*, That to maintain the organized land militia organizations in the military service of the United States at their maximum strength the recruiting rendezvous and depots in any State or Territory may, at the request of the governor thereof, enlist and train recruits for the organized land militia organizations in the service of the United States from said State or Territory. *Sec. 10, id.*

1392. *Same—organization of recruiting system for.*—That in the organization of a recruiting system, after Congress shall have authorized the raising of volunteer forces, the President is authorized to employ retired officers, noncommissioned officers, and privates of the Regular Army, either with their rank on the retired list or, in the case of enlisted men, with increased noncommissioned rank; or he may, by and with the advice and consent of the Senate, appoint and employ retired officers below the grade of colonel, with increased

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volunteer commissioned rank not to exceed in the case of any officer one grade above that held by him upon the retired list, or retired enlisted men with volunteer commissioned rank not above the grade of first lieutenant: *Provided*, That retired officers and enlisted men while thus employed shall not be eligible for transfer to the field units, but shall receive the full pay and allowances of the respective grades in which they are serving, whether volunteer or regular, in lieu of their retired pay and allowances: *Provided further*, That upon the termination of the duty or, in case of those given volunteer rank, upon muster out as volunteers said retired officers and enlisted men shall revert to their retired status. *Sec. 11, id.*

1393. *Same—assignment and transfer of officers of.*—That, except as otherwise specifically prescribed by law, all officers provided for in this act shall be subject to such assignments of duty and such transfers as the President may direct: *Provided*, That medical officers of Volunteers when detailed as consulting surgeons shall not exercise command over the hospitals to which they may be assigned for duty, except that by virtue of their commissions they may command all enlisted men: *Provided further*, That medical inspectors shall be detailed for duty with each army, field army, or army corps, and division, and for the base and lines of communications, and that no officer shall be detailed for duty as a medical inspector except he be experienced in military sanitation. *Sec. 12, id., 351.*

1394. *Same—pay, allowances and pensionable status of.*—That all officers and enlisted men of the volunteer forces shall be in all respects on the same footing as to pay, allowances, and pensions as officers and enlisted men of corresponding grades in the Regular Army. *Sec. 13, id.*

1395. *Same—repeal of all laws in conflict with.*—That all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby, repealed. *Sec. 14, id.*

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CHAPTER XXXIII.

INDIANS—INDIAN AGENTS—INDIAN COUNTRY.

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INDIAN AGENTS.

1396. *Detail of Army officers.*—The President may require any military officer of the United States to execute the duties of an Indian agent; and when such duties are required of any military officer, he shall perform the same without any other compensation than his actual traveling expenses.[1] *Sec. 2062, R. S.*

1397. *Same.*—Hereafter the President may detail officers of the United States Army to act as Indian agents at such agencies as, in the opinion of the President, may require the presence of any army officer, and while acting as Indian agents such officers shall be under the orders and direction of the Secretary of the Interior.[2] *Act of July 1, 1898 (30 Stat. 573).*

1398. *Compensation for extra services.*—No compensation beyond their actual expenses for extra services shall be allowed any Indian

[1] Officers of the Army acting as Indian agents at places where there are suitable quarters provided by the Government are not entitled to commutation of quarters. (4 Comp. Dec., 212; 3 id., 223.)

[2] The acts of July 1, 1898 (30 Stat. 573), March 2, 1899 (id., 926), and May 31, 1900 (31 id., 224), have contained the requirement that the sums appropriated for compensation of Indian agents "shall not take effect or become available in any case for or during the time in which any officer of the Army of the United States shall be engaged in the performance of the duties of Indian agent at any of the agencies" named therein.

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agent or subagent for services when doing duty under the order of the Government, detached from their agency and the boundary of the tribe to which they are agents or subagents. *Sec. 2063, R. S.*

1399. *Army officer to witness issues.*—The superintendent, agent, or subagent, together with such military officer as the President may direct, shall be present and certify to the delivery of all goods and money required to be paid or delivered to the Indians.[1] *Sec. 2088, R. S.*

1400. *Removal of unauthorized settlers.*—Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of one thousand dollars. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands.[2] *Sec. 2118, R. S.*

1401. *Sale of cattle, etc., of Indians.*—The agent of each tribe of Indians, lawfully residing in the Indian country,[3] is authorized to sell for the benefit of such Indians any cattle, horses, or other live stock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the

[1] An officer of the Army who, under proper authority, witnesses and certifies to the issue of annuity goods to Indians is entitled to actual traveling expenses, but not to mileage, while traveling in the performance of such duty, such expenses to be paid from the proper Indian appropriation. (5 Comp. Dec., 982.)

[2] Worcester *v.* Georgia, 6 Peters, 515; Clark *v.* Smith, 13 id., 195; Lattimer *v.* Poteet, 4 McLean, 82.

[3] The term "Indian country" contained in section 1 of the act of June 30, 1834 (4 Stat. 79), though not incorporated in the Revised Statutes, and though repealed simultaneously with their enactment, may be referred to in order to determine what is meant by the term when used in statutes; and it applies to all the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not, and whether acquired before or since the passage of that act. (Ex parte Crow Dog, 109 U. S., 556; Bates *v.* Clark, 95 U. S., 204. See also, as to the status of the Indian Territory, Cook *v.* U. S., 138 U. S., 157.)

Held (October, 1877) that the term "Indian country," as employed in the statutes regulating trade and intercourse with the Indians (see, particularly, ch. 4, title 28, Rev. Stat.), might properly be defined in general as including the following territory, viz: Indian reservations occupied by Indian tribes; other districts so occupied to which the Indian title has not been extinguished; any districts not in other respects Indian country over which the operation of those statutes may be extended by treaty or act of Congress. (Dig. J. A. G., 673, III A. See this opinion as adopted and incorporated in G. O. 97, Headquarters of Army, 1877; also, in the same connection, 14 Opins. Atty. Gen., 290; U. S. *v.* Forty-three Gallons of Whisky, 3 Otto, 188; Bates *v.* Clark, 5 id., 204; U. S. *v.* Seveloff, 2 Sawyer, 311. That, in view of the act of March 3, 1873, extending to it certain provisions of the act of June 30, 1834, the Territory of Alaska is "Indian country," so far as concerns the introduction and disposition of spirituous liquor, and that persons violating such provisions may therefore be arrested by military force, see *In re* Carr, 3 Sawyer, 316; also citation from same case in note to Alaska, sec. 2, and 14 Opins. Atty. Gen., 327; Patchen *v.* U. S., 11 Fed. Rep., 47; U. S. *v.* Forty-three Cases of Cognac Brandy, 14 id., 539.)

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Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of War connected with the movement or subsistence of troops. *Sec. 2127, R. S.*

1402. *Penalty for removing cattle.*—Every person who drives or removes, except by authority of an order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops, any cattle, horses, or other stock from the Indian country for the purposes of trade or commerce, shall be punishable by imprisonment for not more than three years, or by a fine of not more than five thousand dollars, or both. *Sec. 2138, R. S.*

INTRODUCING LIQUOR INTO THE INDIAN COUNTRY—SALES TO INDIANS.

1403. *Penalty for sales, etc.*—No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years and by fine of not more than three hundred dollars for each offense. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority in writing from the War Department, or any officer duly authorized thereunto by the War Department. All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where the offense shall have been committed, or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation, and if in the Indian Territory, before the United States court commissioner or commissioner of the circuit court of the United States residing nearest the place where the offense was committed who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United

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States having jurisdiction of the offense.[1] *Sec. 2139, R. S., as amended by Act of July 23, 1892 (27 Stat. 260).*

1404. *Same.*—Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquors, including beer, ale and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through any of its departments, exercise guardianship, and any per-

[1] The title to the act of July 23, 1892, reads: "An act to amend sections twenty-one hundred and thirty-nine, twenty-one hundred and forty, and twenty-one hundred and forty-one of the Revised Statutes touching the sale of intoxicants in the Indian country, and for other purposes," yet the enacting clause of the act reads:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section twenty-one hundred and thirty-nine of the Revised Statutes be amended and reenacted so as to read as follows: 'Section 2139. * * *'"

Then follows the act as set forth in the above paragraph. It is clear the amendment applies only to those parts of the two sections that are inconsistent with the new section. The object of the amendment was to make the prohibition include malt liquors, and to clearly define the person or tribunal to whom complaint should be made. The action directed in sections 2140 and 2141 as to the seizure and destroying of liquor remains unaffected by the amendment. These sections are given in paragraphs 1405 and 1406, post.

As to the meaning of the term Indian country, see Dig. Op. J. A. G., 673 III A.

A stock of liquors is not introduced into the Indian country by being transported across an Indian reservation to a place where it may be lawfully sold and is not subject to seizure while in transit nor after its arrival at its place of destination. (U. S. *v.* Four Bottles of Sour Mash Whisky, 90 Fed. Rep., 720.)

The disposition of spiritous liquors to an Indian under the charge of an Indian agent, who has abandoned his nomadic life and tribal relations and adopted the habits and manners of civilized people, violates section 2139 of the Revised Statutes. (U. S. *v.* Osborn, 52 Fed. Rep., 58.)

Section 2139 of the Revised Statutes provides that every person who disposes of spirituous liquors to any Indian under the charge of any Indian superintendent or agent shall be punished, etc. *Held*, that an Indian of the Nez Percés Tribe, a soldier in the United States Army, is within the meaning of the statute. (U. S. *v.* Hurshman, 53 Fed. Rep., 543.) It is no defense to a prosecution under section 2139 for introducing spirituous liquors into the Indian country that the United States has licensed the traffic in such liquors therein. (U. S. *v.* Ellis, 51 id., 808.)

As section 2139 of the Revised Statutes, previous to the amendment of July 23, 1892, made punishable the introduction into the Indian country of "spirituous liquor or wine" only, it did not include lager beer, that being a malt liquor made by fermentation. (In re McDonough, 49 id., 360; U. S. *v.* Ellis, 51 id., 808, reversed in Sarlis *v.* U. S., 152 U. S., 570.)

As to the law regarding the introduction of liquor into that part of the Indian country embraced within the limits of the State of Oklahoma, see the Oklahoma enabling act (34 Stat. 267), and the decision of the Supreme Court of the United States in Ex parte Webb (225 U. S., 663). See also the act of March 1, 1913 (37 Stat. 699), prohibiting the shipment or transportation of intoxicating liquor into a State with intent to use the same in any manner in violation of any law of such State.

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son who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: *Provided, however*, that the person convicted shall be committed until fine and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereto by the War Department.

SEC. 2. So much of the act of the twenty-third of July, eighteen hundred and ninety-two, as is inconsistent with the provisions of this act is hereby repealed.[1] *Act of Jan. 30, 1897 (29 Stat. 506).*

1405. *Wines for sacramental purposes.*—Hereafter it shall not be unlawful to introduce and use wines solely for sacramental purposes, under church authority, at any place within the Indian country or any Indian reservation, including the Pueblo Reservations in New Mexico: *Provided also*, That the powers conferred by section seven hundred and eighty-eight of the Revised Statutes upon marshals and their deputies are hereby conferred upon the chief special officer for the suppression of the liquor traffic among Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs or the Secretary of the Interior. *Act of Aug. 24, 1912 (37 Stat. 519).*

1406. *Search for concealed liquors.*—If any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of any military post has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, subagent, or commanding officer may cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited,

[1] See Dig. Op. J. A. G., 672 II F to 675 IV, edition, 1912.

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one-half to the informer and the other half to the use of the United States; and if such person be a trader his license shall be revoked and his bond put in suit. It shall, moreover, be the duty of any person in the service of the United States or of any Indian to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this and the preceding section Indians shall be competent witnesses. *Sec. 2140, R. S.*

1407. *Distilleries.*—Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the superintendent of Indian Affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same. *Sec. 2141, R. S.*

1408. *Prosecution of officer, soldier, etc.*—No part of section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, wines, beer, or any intoxicating beverage whatsoever to any Indian.[1] *Act of July 4, 1884 (23 Stat. 94).*

MISCELLANEOUS PROVISIONS.

1409. *Removal of persons from Indian country.*—The superintendent of Indian affairs, and the Indian agents and subagents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.[2] *Sec. 2147, R. S.*

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[1] The act of July 4, 1884, declaring that section 2139 of the Revised Statutes shall not be a bar to the prosecution of any officer, soldier, or employee of the United States who shall "furnish liquors, wines, beer, or any intoxicating beverage to" any Indian is not a legislative construction of such section. (In re McDonough, 49 Fed. Rep., 360.)

[2] Under the Constitution, the acts of Congress, and the regulations adopted by the Indian Department, the power of the Commissioner of Indian Affairs and the agent acting under him and by his direction in removing anyone not a member of an Indian tribe is a matter intrusted to the discretion of the commissioner, and is not reviewable. (Adams *v.* Freeman, 50 Pac. Rep., 135.)

An order from a State court restraining an Indian agent from ousting trespassers from an Indian reservation should be disregarded as without jurisdiction. (20 Opin. Atty. Gen., 245.)

An Indian agent has no authority forcibly to eject persons from land not within an Indian reservation, although it is inclosed in allotments made to Indians in fulfillment of a treaty stipulation, and may be restrained by injunction from so ejecting one who, before such allotment, entered the land as a homestead and made valuable improvements thereon. (La Chapelle *v.* Bubb, 2 Fed. Rep., 545.)

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1410. *Apprehension by military force.*—The military forces of the United States may be employed in such manner and under such regulations as the President may direct—

First. In the apprehension of every person who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law;

Second. In the examination and seizure of stores, packages, and boats, authorized by law;

Third. In preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law;

Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits set up or continued within the Indian country.[1] *Sec. 2150, R. S.*

1411. *Limit of detention.*—No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.[2] *Sec. 2151, R. S.*

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[1] There is not in the treaties with the Indians of the Indian Territory, or sections 2147, 2150, 2152, Revised Statutes, any express authority vested in the President to use the Army in such Territory for the apprehension of local robbers or thieves, etc., or for the protection of corporations or individuals from such robbers or other outlaws, except in so far as such offenders may be persons who are in, or are attempting to enter the Indian country "contrary to law," or are Indians charged with crime. (Sec. 2152, R. S.) In these cases they could be apprehended by the military forces, but only by virtue of and conformably to the statutes cited, and not (unless they be Indians) because they are train robbers or other offenders against the local peace or laws. (Dig. J. A. G. 100, C.)

The troops of the United States can not be employed in the Indian Territory for the purpose of assisting in the preservation of the peace and the arrest of bandits and outlaws unless they are trespassing upon Indian country, or absconding offenders within the provisions of section 2152 of the Revised Statutes. (21 Opin. Att. Gen., 72.)

Whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves than civilians for actual wrongs committed in time of peace under orders emanating from a source which is itself without authority in the premises. Hence a military officer seizing liquors supposed to be in Indian country when they are not is liable to an action as a trespasser. (Bates *v.* Clark, 95 U. S., 204.)

Officers of the Army making arrests under section 23 of the act of June 30, 1834 (4 Stat. 732; sec. 2150, R. S.), act as officers of civil law. To justify such arrests there must be strong probable cause. (In re Carr, 3 Sawyer, 316.)

[2] But note that, in view of the provisions of section 2151, Revised Statutes, an officer of the Army who detains a person arrested under section 2150 longer than five days before "conveying him to the civil authority," or subjects him when in arrest to unreasonably harsh treatment, renders himself liable to an action in damages for false imprisonment. (In re Carr, 3 Sawyer, 316; Waters *v.* Campbell, 5 id., 17.)

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1412. *Arrest of Indians.*—The superintendents, agents, and subagents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.[1] *Sec. 2152, R. S.*

1413. *Prohibition of permits to Indians to go into Texas.*—All officers and agents of the Army and Indian Bureaus are prohibited, except in a case specially directed by the President, from granting permission in writing or otherwise to any Indian or Indians on any reservation to go into the State of Texas under any pretext whatever; and any officer or agent of the Army or Indian Bureau who shall violate this provision shall be dismissed from the public service. And the Secretary of the Interior is hereby directed and required to take at once such other reasonable measures as may be necessary in connection with said prohibition to prevent said Indians from entering said State. *Sec. 4, Act of May 11, 1880 (21 Stat. 132).*

[1] *Held* that in the execution of process of arrest under the act of March 3, 1885 (rendering Indians amenable to the criminal laws of the Territories), the military may, by direction of the President, legally be employed to aid the civil officials in such arrests, such employment being expressly authorized by section 2152, Revised Statutes. (Dig. J. A. G., 100, C.)

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CHAPTER XXXIV.

THE EMPLOYMENT OF MILITARY FORCE.

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INSURRECTION AND INVASION.

1414. *Republican form of government.*—The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence.[1] *Constitution of the United States, Article IV, section 4.*

1415. *Power of Congress over militia.*—The Congress shall have power * * *

To provide for calling forth the militia to execute the laws of the Union, to suppress insurrections, and repel invasions.[2] *Constitution of the United States, Article I, section 8, paragraph 15.*

1416. *Insurrection against a State.*[3]—In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive, when the legislature can not be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.[4] *Sec. 5297, R. S.*

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[1] Luther *v.* Borden, 7 How., 1; Texas *v.* White, 7 Wall., 700; in re Duncan, 139 U. S., 449; Taylor et al. *v.* Beckham (No. 1), 178 U. S., 548; South Carolina *v.* United States, 199 U. S., 437; Elder *v.* Colorado ex rel. Badgley, 204 U. S., 85; Pacific States Telephone Co. *v.* Oregon, 223 U. S., 118; Kiernan *v.* Portland, 223 U. S., 151. See also Winthrop, Military Law and Precedents, pp. 1347–1349.

[2] For enactments of Congress in pursuance of the authority above conferred see the chapter entitled The Militia. See also subsequent paragraphs of this chapter.

[3] This paragraph and those following to include—give Sections 5297 to 5322, inclusive, of the Revised Statutes. These sections constitute Title 49, Insurrection, of the Revised Statutes. See Winhtrop, Military Law and Precedents, pp. 1349–1351.

[4] Under article 4, section 4, of the Constitution, the Army may be employed to protect a State from "invasion" or "domestic violence" only by order of the President, made "on application of the legislature, or of the executive when the legislature can not be convened." A military commander, of whatever rank or command, can have no authority, except by the order thus made of the President, to furnish troops to a governor or other functionary of a State, to aid him in making arrests or establishing law and order. (Dig. Opin. J. A. G., p. 99, II, A.)

The proviso of the Constitution, "when the legislature can not be convened," may be said to mean when it is not in session, or can not, by the State law, be assembled forthwith or in time to provide for the emergency. When it is in

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1417. *Insurrection against the Government of the United States.*—Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.[1] *Sec. 5298, R. S.*

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session, or can legally and at once be called together, it will not be lawful for the President to employ the Army on the application merely of the governor. (Id., p. 99, II, A, 1.)

Where calls are made upon the President, under section 4, article 4, of the Constitution, by two persons, each claiming to be governor of the same State, to protect the State against domestic violence, it of necessity devolves upon the President to determine, before giving the required aid, which of such persons is the lawful incumbent of the office. (XIV Opin. Att. Gen., 391; VII id., 8; Prize Cases, 2 Black, 97; Dodge *v.* Woolsey, 18 Howard, 378; Ex parte Milligan, 4 Wallace, 129.)

A military force employed according to article 4, section 4, of the Constitution, is to remain under the direction and orders of the President as Commander in Chief and his military subordinates; it can not be placed under the direct orders or exclusive disposition of the governor of the State. (Dig. Opin. J. A. G., p. 101, II, E.)

In all cases of civil disorders or domestic violence it is the duty of the Army to preserve an attitude of indifference and inaction till ordered to act by the President, by the authority of the Constitution or of section 2150, 5297, or 5298, Revised Statutes, or other public statute. An officer or soldier may, indeed, interfere to arrest a person in the act of committing a crime, or to prevent a breach of the peace in his presence, but this he does as a citizen and not in his military capacity. Any combined effort by the military, as such, to make arrests or otherwise prevent breaches of the peace or violations of law in civil cases, except by the order of the President or the requirement of a United States official authorized to require their services on a posse comitatus, must necessarily be illegal. In a case of civil disturbance in violation of the laws of a State, a military commander can not volunteer to intervene with his command without incurring a personal responsibility for his acts. In the absence of the requisite orders he may not even march or array his command for the purpose of exerting a moral effect or any effect *in terrorem;* such a demonstration, indeed, could only compromise the authority of the United States, while insulting the sovereignty of the State. (Id., p. 101, II, D.)

See also Army Regulations, article 47, for instructions as to the use of the military force in support of the civil authority.

[1] The National Government has the right to use physical force in any part of the United States to compel obedience to its laws, and to carry into execution the powers conferred upon it by the Constitution. "We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it." (Ex parte Siebold, 100 U. S., 371, 395; U. S. *v.* Neagle, 135 U. S., 1, 60; Logan *v.* U. S., 144 U. S., 263, 294; in re Waite, 81 Fed. Rep., 359; U. S. *v.* Debs, 164 U. S., 724; U. S. *v.* Cassidy, 67 Fed. Rep., 698.)

An officer who, in the performance of what he conceives to be his official duties, transcends his authority, and invades private rights, is answerable therefor to the Government under whose appointment he acts, and to individuals

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1418. *Power to suppress insurrection.*—Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.[1] *Sec. 5299, R. S.*

1419. *Proclamation to insurgents to disperse.*—Whenever, in the judgment of the President, it becomes necessary to use the military forces under this title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time.[2] *Sec. 5300, R. S.*

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injured by his action; but where there is no criminal intent, he is not liable to answer the criminal process of another Government. (In re Lewis, 83 Fed. Rep., 159; in re Fair et al. 100, id., 149.)

An officer of the Army of the United States whilst serving in the enemy's country during the rebellion was not liable to an action in the courts of that country for injuries resulting from his military orders or acts; nor could he be required by a civil tribunal to justify or explain them upon any allegation of the injured party that they were not justified by military necessity. He was subject to the laws of war, and amenable only to his own Government. (Dorr *v.* Johnson, 100 U. S., 158; Luther *v.* Borden, 7 Howard, 1, 46.)

As a necessary incident of the power to declare and prosecute war, the Federal Government has a right to transport troops through and over the territory of any State of the Union. (Crandall *v.* Nevada, 6 Wall., 35. See also XVI Opin. Att. Gen., 162; XVII id., 242, 333; XIX id., 293, and note to par. 1418, post.)

[1] The power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other except where both can not be executed at the same time. In that case the words of the Constitution itself show which is to yield; "this Constitution and the laws of the United States which shall be made in pursuance thereof; * * * shall be the supreme law of the land."

Although no State could establish and maintain a permanent military government, yet it may use its military power to put down an armed insurrection too strong to be controlled by the civil authority. The State must determine for itself what degree of force the crisis demands. (Luther *v.* Borden, 7 How., 1. See also XVI Opin. Att. Gen., 162. (See also note 2 to par. 1416, ante.)

[2] See XVII Opin. Att. Gen., 333. Section 2 of the act of May 4, 1880 (21 Stat. 113), contained the requirement "that no money appropriated in this act is ap-

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SUSPENSION OF INTERCOURSE.

1420. *Suspension of commercial intercourse.*—Whenever the President, in pursuance of the provisions of this Title, has called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when the insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and such insurrection is not suppressed by such State or States, or whenever the inhabitants of any State or part thereof are at any time found by the President to be in insurrection against the United States, the President may, by proclamation, declare that the inhabitants of such State, or of any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, or proceeding from other parts of the United States to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States.[1] *Sec. 5301, R. S.*

1421. *In loyal States.*—Whenever any part of a State not declared to be in insurrection is under the control of insurgents, or is in dangerous proximity to places under their control, all commercial intercourse therein and therewith shall be subject to the prohibitions and conditions of the preceding section for such time and to such extent as shall become necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President. *Sec. 5302, R. S.*

1422. *To whom prohibition shall extend.*—The provisions of this Title in relation to commercial intercourse shall apply to all commercial intercourse by and between persons residing or being within dis-

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propriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State: *Provided*, That nothing in this provision shall be construed to prevent the use of troops to protect against domestic violence in each of the States on application of the legislature thereof or of the executive when the legislature can not be convened."

[1] See The Reform, 2 Wall., 258; id., 3 Wall., 617; U. S. *v.* Weed, 5 Wall., 62; The Hampton, 5 Wall., 372; The Ouachita Cotton, 6 Wall., 521; The Venice, 2 Wall., 258; Cutner *v.* U. S., 17 Wall., 517.

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tricts within the lines of national military occupation in the States or parts of States declared in insurrection, whether with each other or with persons residing or being within districts declared in insurrection and not within those lines; and all persons within the United States, not native or naturalized citizens thereof, shall be subject to the same prohibitions, in all commercial intercourse with inhabitants of States or parts of States declared in insurrection, as citizens of States not declared to be in insurrection. *Sec. 5303, R. S.*

1423. *To what extent permitted.*—The President may, in his discretion, license and permit commercial intercourse with any part of such State or section, the inhabitants of which are so declared in a state of insurrection, so far as may be necessary to authorize supplying the necessities of loyal persons residing in insurrectionary States, within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen, or others employed and paid by them, pursuant to rules relating thereto, which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places and to such monthly amounts as shall have been previously agreed upon, in writing, by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for that purpose. Such commercial intercourse shall be in such articles and for such time and by such persons as the President, in his discretion, may think most conducive to the public interest; and, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.[1] *Sec. 5304, R. S.*

1424. *Appointment and compensation of officers.*—The Secretary of the Treasury may appoint such officers at places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations. In all cases where officers of the customs, or other salaried officers, are appointed by him to carry into effect such licenses, rules, and regulations, such officer shall be entitled to receive one thousand dollars a year for his services, in addition to his salary or compensation under any other

[1] See The Sea Lion, 5 Wall., 630; The Ouachita Cotton, 6 Wall., 521; Coppell *v.* Hall, 7 Wall., 542; McKee *v.* U. S., 8 Wall., 163; U. S. *v.* Lane, 8 Wall., 185. As to intercourse with occupied territory, see chapter 12, Military Government and Martial Law, Birkhimer.

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law. But the aggregate compensation of any such officer shall not exceed the sum of five thousand dollars in any one year. *Sec. 5305, R. S.*

1425. *Trading without license, etc.*—Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this title, or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same. *Sec. 5306, R. S.*

1426. *Investigations to detect frauds.*—It shall be the duty of the Secretary of the Treasury, from time to time, to institute such investigations as may be necessary to detect and prevent frauds and abuses in any trade or transactions which may be licensed between inhabitants of loyal States and of States in insurrection. And the agents making such investigations shall have power to compel the attendance of witnesses, and to make examinations on oath. *Sec. 5307, R. S.*

1427. *Confiscation of property employed in aid of insurrection.*—Whenever during any insurrection against the Government of the United States, after the President shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or his agent, attorney, or employé, purchases or acquires, sells or gives, any property of whatsoever kind or description, with intent to use or employ the

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same, or suffers the same to be used or employed in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person engaged therein; or being the owner of any such property, knowingly uses or employs, or consents to such use or employment of the same, all such property shall be lawful subject of prize and capture wherever found; and it shall be the duty of the President to cause the same to be seized, confiscated, and condemned.[1] *Sec. 5308, R. S.*

1428. *Proceedings, where had.*—Such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same [may] be seized, or into which they may be taken and proceedings first instituted. *Sec. 5309, R. S.*

1429. *Property taken on inland waters.*—No property seized or taken upon any of the inland waters of the United States by the naval forces thereof shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts. *Sec. 5310, R. S.*

1430. *How proceedings shall be instituted.*—The Attorney-General, or the attorney of the United States for any judicial district in which such property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.[2] *Sec. 5311, R. S.*

1431. *Prohibition upon transportation of goods to aid insurrection.*—The Secretary of the Treasury is authorized to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any property, whatever may be the ostensible destination of the same, in all cases where there are satisfactory reasons to believe that such property is intended for any place in the possession or under the control of insurgents against the United States, or that there is imminent danger that such property will fall into the possession or under the control of such insurgents; and he is further authorized, in all cases where he deems it expedient so to do, to require reasonable security to be given that property shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents; and he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this sec-

[1] See Mrs. Alexander's Cotton, 2 Wall., 404; Union Ins. Co. *v.* U. S., 6 Wall., 759; Armstrong's Foundry, 6 Wall., 766; Morris's Cotton, 8 Wall., 507; U. S. *v.* Shares of Capital Stock, 5 Blatch., 231.

[2] See Francis *v.* U. S., 5 Wall., 338; Confiscation Cases, 7 Wall., 454; Miller *v.* U. S., 11 Wall., 268; Tyler *v.* Defrees, 11 Wall., 331.

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tion; and if any property is transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport any, it shall be forfeited.[1] *Sec. 5312, R. S.*

1432. *Prohibition upon trade in captured or abandoned property.*—All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this Title, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the panitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same. *Sec. 5313, R. S.*

1433. *Change of port of entry in case of insurrection.*—Whenever the President shall deem it impracticable, by reason of unlawful combinations of persons in opposition to the laws of the United States, to collect the duties on imports in the ordinary way, at any port of entry in any collection district, he may cause such duties to be collected at any port of delivery in the district until such obstruction ceases; in such case the surveyor at such port of delivery shall have the powers and be subject to all the obligations of a collector at a port of entry. The Secretary of the Treasury, with the approval of the President, shall also appoint such weighers, gaugers, measurers, inspectors, appraisers, and clerks as he may deem necessary, for the faithful execution of the revenue laws at such port of delivery, and shall establish the limits within which such port of delivery is constituted a port of entry. And all the provisions of law regulating the issue of marine papers, the coasting trade, the warehousing of imports, and the collection of duties, shall apply to the ports of entry thus constituted, in the same manner as they do to ports of entry established by law. *Sec. 5314, R. S.*

1434. *Removal of custom-house.*—Whenever, at any port of entry, the duties on imports can not, in the judgment of the President, be collected in the ordinary way, or by the course provided in the preceding section, by reason of the cause mentioned therein, he may

[1] See Gay's Gold, 13 Wall., 358.

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direct that the custom-house for the district be established in any secure place within the district, either on land or on board any vessel in the district, or at sea near the coast; and in such case the collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching the district, until the duties imposed by law on such vessels and their cargoes are paid in cash. But if the owner or consignee of the cargo on board any vessel thus detained, or the master of the vessel, desires to enter a port of entry in any other district where no such obstructions to the execution of the laws exist, the master may be permitted so to change the destination of the vessel and cargo in his manifest; whereupon the collector shall deliver him a written permit to proceed to the port so designated. And the Secretary of the Treasury, with the approval of the President, shall make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable. *Sec. 5315, R. S.*

1435. *Enforcement of preceding sections.*—It shall be unlawful to take any vessel or cargo detained under the preceding section from the custody of the proper officers of the customs, unless by process of some court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons, too great to be overcome by the officers of the customs, the President, or such person as he shall have empowered for that purpose, may employ such part of the Army or Navy or militia of the United States, or such force of citizen volunteers as may be necessary, to prevent the removal of such vessel or cargo, and to protect the officers of the customs in retaining the custody thereof. *Sec. 5316, R. S.*

1436. *Entire district closed to entry.*—Whenever, in any collection district, the duties on imports can not, in the judgment of the President, be collected in the ordinary way, nor in the manner provided by the three preceding sections, by reason of the cause mentioned in section fifty-three hundred and fourteen [Rev. Stat.],[1] the President may close the port of entry in that district; and shall in such case give notice thereof by proclamation. And thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed until it is opened by the order of the President on the cessation of such obstructions. Every vessel from beyond the United States, or having on board any merchandise liable to duty, which attempts to enter any port which has been closed under this section, shall, with her tackle, apparel, furniture, and cargo, be forfeited. *Sec. 5317, R. S.*

[1] Paragraph 1433, ante.

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1437. *Vessels in addition to revenue cutters may be employed.*—In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the revenue cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required. *Sec. 5318, R. S.*

1438. *Forfeiture of vessels belonging to citizens of insurrectionary States.*—From and after fifteen days after the issuing of the proclamation, as provided in section fifty-three hundred and one [Rev. Stat.],[1] any vessel belonging in whole or in part to any citizen or inhabitant of such State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited.[2] *Sec. 5319, R. S.*

1439. *Refusal of clearance to vessels laden with suspected merchandise.*—The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such merchandise, or any part thereof, whatever may be its ostensible destination, is intended for ports in possession or under control of insurgents against the United States; and if any vessel for which a clearance or permit has been refused by the Secretary of the Treasury, or by his order, shall depart or attempt to depart for a foreign or domestic port without being duly cleared or permitted, such vessel, with her tackle, apparel, furniture, and cargo, shall be forfeited. *Sec. 5320, R. S.*

1440. *Bond upon clearance.*—Whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he deems it necessary, under the circumstances of the case, to require a bond to be executed by the master or the owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States. *Sec. 5321, R. S.*

1441. *Liens upon condemned vessels.*—In all cases wherein any vessel, or other property, is condemned in any proceeding by virtue of any laws relating to insurrection or rebellion, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and

[1] Paragraph 1420, ante. [2] The Schooner Keeling, Blatch Pr. Cas., 92.

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amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such vessel, or other property, under the laws of the United States or any State thereof not declared to be in insurrection. No such claim shall be allowed in any case where the claimant has knowingly participated in the illegal use of such ship, vessel, or other property. This section shall extend to such claims only as might have been enforced specifically against such vessel, or other property, in any State not declared to be in insurrection, wherein such claim arose.[1] *Sec. 5322, R. S.*

CIVIL RIGHTS.

1442. *Equal rights under the law.*—All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. *Sec. 1977, R. S.*

1443. *Rights of citizens in respect to real and personal property.*—All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. *Sec. 1978, R. S.*

1444. *Civil action for deprivation of rights.*—Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. *Sec. 1979, R. S.*

1445. *Conspiracy.*—First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

[1] The Hampton, 5 Wall., 372.

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Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. *Sec. 1980, R. S.*

1446. *Action for neglect to prevent conspiracy.*—Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured or his legal representa-

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tives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. *Sec. 1981, R. S.*

1447. *District attorney, etc., to prosecute.*—The district attorneys, marshals, and deputy marshals, the commisioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the Territorial court having cognizance of the offense. *Sec. 1982, R. S.*

1448. *Commissioners.*—The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. *Sec. 1983, R. S.*

1449. *Same—Appoint persons to execute warrants, etc.*—The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State of Territory within which they are issued. *Sec. 1984, R. S.*

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1450. *Marshal to obey precepts, etc.*—Every marhsal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions hereof. *Sec. 1985, R. S.*

1451. *Fees of district attorney, etc.*—The district attorneys, marshals, their deputies, and the clerks of the courts of the United States and Territorial courts shall be paid for their services, in cases under the foregoing provisions, the same fees as are allowed to them for like services in other cases; and where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination. *Sec. 1986, R. S.*

1452. *Of persons appointed to execute process, etc.*—Every person appointed to execute process under section nineteen hundred and eighty-four [Rev. Stat.][1] shall be entitled to a fee of five dollars for each party he may arrest and take before the commissioner, with such other fees as may be deemed reasonable by the commissioner for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the commissioner; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction. *Sec. 1987, R. S.*

1453. *Speedy trial.*—Whenever the President has reason to believe that offenses have been or are likely to be committed against the provisions of chapter seven of the Title CRIMES, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time, as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him, to attend at the place and for the time therein designated. *Sec. 1988, R. S.*

1454. *Aid of the military and naval forces.*—It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under any of the preceding provisions, or as shall be necessary to prevent the violation

[1] Paragraph 1449, ante.

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and enforce the due execution of the provisions of this Title.[1] *Sec. 1989, R. S.*

1455. *Peonage abolished.*—The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void. *Sec. 1990, R. S.*

1456. *Foregoing section, how enforced.*—Every person in the military or civil service in the Territory of New Mexico shall aid in the enforcement of the preceding section.[2] *Sec. 1991, R. S.*

THE ELECTIVE FRANCHISE.

1457. *Presence of troops at election.*—Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years. *Sec. 22, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1092).*

(This paragraph is practically identical with section 5528 of the Revised Statutes, which is repealed.)

1458. *Preventing voting.*—Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years. *Sec. 23, id.*

(This paragraph is practically identical with section 5529 of the Revised Statutes, which is repealed.)

1459. *Attempt to fix qualification of electors.*—Every officer of the army or navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of

[1] This power is not repealed or abridged by the posse comitatus act (act of June 18, 1878, 20 Stat. 152). (19 Opin. Att. Gen., 570.)

[2] Whether this section has been repealed by the enabling act under which New Mexico became a State has not been decided.

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voters at any election in any State shall be punished as provided in the preceding section. *Sec. 24, id.*

(This is a reenactment of section 5530 of the Revised Statutes. For the preceding section referred to in this paragraph see paragraph 1458.

1460. *Interference with an officer of election.*—Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three. *Sec. 25, id., 1093.*

(This paragraph is practically identical with section 5531 of the Revised Statutes, which is repealed. For section 23, referred to in this paragraph, see paragraph 1458.)

1461. *Penalty.*—Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote. *Sec. 26, id.*

(This paragraph is practically identical with section 5532 of the Revised Statutes, which is repealed.)

QUARANTINE.

1462. *State health laws to be observed by United States officers, etc.*—The quarantines and other restraints established by the health laws of any State respecting any vessels arriving in or bound to any port or district thereof shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several revenue cutters, and by the military officers commanding in any fort or station upon the seacoast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws according to their respective powers and within their respective precincts, and as they shall be directed from time to time by the Secretary of the Treasury. But nothing in this Title shall enable any State to collect a duty of tonnage or impost without the consent of Congress.[1] *Sec. 4792, R. S.*

[1] See Gibbons *v.* Ogden, 9 Wh., 1; Passenger Cases, 7 How., 406.

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1463. *National quarantine.*—The Secretary of the Treasury shall have the control, direction, and management of all quarantine stations, grounds, and anchorages established by authority of the United States, and as soon as practicable after the approval of this Act shall select and designate such suitable places for them and establish the same at such points on or near the coast line of the United States or the border of the United States and a foreign country, as in his judgment are best suited for the same and necessary to prevent the introduction of yellow fever into the United States, and, in his discretion, he may also establish at the group of islands known as the Dry Tortugas, at the western end of the Florida reef, and at such other point or points on or near the coast line of the United States (not to exceed four in the aggregate) as he deems necessary, quarantine grounds, stations, and anchorages, whereat or whereto infected vessels bound for any port in the United States may be detained or sent for the purpose of being disinfected, having their cargoes disinfected and discharged, if necessary, and their sick treated in hospitals until all danger of infection or contagion from such vessels, their cargoes, passengers, or crews has been removed. *Sec. 1, Act of June 19, 1906 (34 Stat. 299).*

1464. *Same.*—Any vessel, or any officer of any vessel, or other person other than State health or quarantine officers, entering within the limits of any quarantine grounds and anchorages, or any quarantine station and anchorage, or departing therefrom, in disregard of the quarantine rules and regulations or without the permission of the officer in charge of such quarantine ground and anchorage, or of such quarantine station and anchorage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both, in the discretion of the court. That any master or owner of any vessel violating any provision of this Act, or any provision of an Act entitled "An Act granting additional powers and imposing additional duties on the Marine-Hospital Service," approved February fifteenth, eighteen hundred and ninety-three, or violating any rule or regulation made in accordance with this Act or said Act of February fifteenth, eighteen hundred and ninety-three, relating to the inspection of vessels, or to the prevention of the introduction of contagious or infectious diseases into the United States, or any master, owner, or agent of any vessel making a false statement relative to the sanitary condition of such vessel or its contents, or as to the health of any passenger or person thereon shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both, in the discretion of the court. *Sec. 4, id., 300.*

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1465. *Obstructing the mails.*—Whoever shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than one hundred dollars, or imprisoned not more than six months, or both.[1] *Sec. 201, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1127).*

(This paragraph is founded on section 3995 of the Revised Statutes, which is repealed.)

1466. *Parades, etc., to have right of way.*—The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire-engines and fire departments shall not be interfered with thereby. *Sec. 50, Act of Feb. 18, 1909 (35 Stat. 634).*

(As the above appears in an act having relation to the National Guard of the District of Columbia it may be inferred that the streets, etc., mentioned are those of the said District.)

NEUTRALITY.

1467. *Accepting Commission.*—Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years.[2] *Sec. 9, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1089).*

(This paragraph is practically identical with section 5281 of the Revised Statutes, which is repealed.)

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[1] The entire strength of the nation may be used to enforce, in any part of the land, the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arise, the Army of the nation and all its militia are at the service of the nation to compel obedience to its laws. (In re Debs, 158 U. S., 564, 582; in re Neagle, 135 U. S., 1; ex parte Siebold, 100 U. S., 371, 395; U. S. *v.* Kirby, 7 Wall., 482. See Winthrop, Military Law and Precedents, p. 1355, note 3.)

[2] The neutrality act has been uniformly treated, by the Executive Departments and by judges of the United States courts, as embracing warlike enterprises set on foot in this country against a friendly power at peace with all the world. (U. S. *v.* Sullivan, 9 N. Y. Leg. Obs., 257.)

Neutrality, strictly speaking, consists in abstinence from any participation in a public, private, or civil war, and in impartiality of conduct toward both parties; but the maintenance unbroken of peaceful relations between two powers when the domestic peace of one of them is disturbed is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency; and, as mere matter of municipal administration, no nation can permit unauthorized acts of war

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1468. *Enlistments.*—Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years.[1] *Sec. 10, id.*

(This paragraph is founded on section 5282 of the Revised Statutes, which is repealed.)

1469. *Fitting out vessel.*—Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States

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within its territory in infraction of its sovereignty, while good faith toward friendly nations requires their prevention. (The Three Frends, 166 U. S., 1.)

The organization, in one country or State, of combinations to aid or abet rebellion in another, or in any other way to act on its political institutions, is a violation of national amity and comity, and an act of semihostile interference with the affairs of other peoples. * * * But there is no municipal law to forbid and punish such combinations, either in the United States or Great Britain. (VIII Opin. Att. Gen., 216.)

The policy of this country is, and ever has been, a perfect neutrality and noninterference in the quarrels of other nations. (III Opin. Att. Gen., 739.)

The act of April 30, 1818, like that of June 5, 1794, was intended to secure, beyond all risk of violation, the neutrality and pacific policy which they consecrate as our fundamental law. (Id., 741.)

In the absence of express authority from Congress, an officer of the Army can not accept remuneration from a foreign power, in return for military or other public service rendered, without a violation of Aticle I, section 9, paragraph 7, of the Constitution. (See U. S. *v.* Landers, 2 Otto., 79; XIII Opin. Att. Gen., 199.) Nor can such an officer (in the absence of such authority) properly be granted a leave of absence for the purpose of rendering foreign service, even without compensation, since such a proceeding would be contrary to the spirit and intent of the laws relating to the Army, which clearly contemplate that the services of its officers shall be rendered to the United States. (Dig. Opin. J. A. G., 79–I C 3.)

[1] The enlistment of seamen or others for marine service on Mexican steamers in New York, they not being Mexicans transiently within the United States, is a clear violation of this section, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred. (IV Opin. Att. Gen., 336.)

This section applies to foreign consuls raising troops in the United States for the military service of Great Britain. (VII id., 367.) It does not apply to those who go abroad for foreign enlistment, or to those who transport such persons. (U. S. *v.* Kazinski, 2 Sprague, 7.) The enlistment must be made within the territory of the United States, and the section does not apply to one who goes abroad with intent there to enlist. (Id.) The words "soldier" and "enlist" as used in this section are to be understood in their technical sense. (Id.; U. S. *v.* O'Brien, 75 Fed. Rep., 900.)

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for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer and the other half to the use of the United States.[1] *Sec. 11, id., 1090.*

(This paragraph is founded on section 5283 of the Revised Statutes, which is repealed.)

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[1] To constitute an offense under this section, the vessel must be fitted out and armed with the specific intent. (U. S. *v.* Skinner, 1 Brun. Coll. Cases.) It is not necessary that the vessel should be armed or manned for the purpose of committing hostilities before she leaves the United States, if it is the intention that she shall be so fitted subsequently (The City of Mexico, 28 Fed. Rep., 148), or if the separate parts of the expedition are to be united on the high seas. (U. S. *v.* The Mary N. Hogan, 18 Fed. Rep., 529, and 20 id., 50; The Carondelet, 37 Fed. Rep., 799; The Lancaster, 85 id., 760; U. S. *v.* Quincy, 6 Peters, 445.)

The status of the insurgent party will be regarded by the courts as it is regarded by the political or executive departments of the United States at the time of the commission of the alleged offense. (Gelston *v.* Hoyt, 3 Wheat., 246, 324; U. S. *v.* Palmer, id., 610, 625; Kennett *v.* Chambers, 14 How., 38; Wharton, Int. Law Dig., secs. 551, 552; U. S. *v.* Trumbull, 48 Fed. Rep., 99, 104.) The word "people," as used in this section, is "one of the denominations applied by the act of Congress to a foreign power." (U. S. *v.* Quincy, 6 Pet., 445.)

I know of no law or regulation which forbids any person, or government, whether the political designation be real or assumed, from purchasing arms from the citizens of the United States and shipping them at the risk of the purchaser. (X Opin. Att. Gen., 452.) The sending of munitions of war from a neutral country to a belligerent port for sale, as articles of commerce, is unlawful only as subjecting such property to capture. (The Santissima Trinidad, 7 Wheat., 283; The City of Mexico, 24 Fed. Rep., 924.) It is the right of a belligerent to purchase goods and instruments of war in a neutral nation, but it may be denied by a law passed for such purpose. (X Opin. Att. Gen., 61.)

The provisions of this section do not apply to a vessel which receives arms and munition of war in this country, as cargo merely, with intent to carry them to a party of insurgents in a foreign country, but not with the intent that they shall constitute any part of the fittings or furnishings of the vessel herself. (U. S. *v.* The Itata, 56 Fed. Rep., 508, U. S. *v.* 2,000 Cases of Rifles, id.) A vessel is not liable to forfeiture under this section, nor is she liable to condemnation as piratical, on the ground that she is in the employ of an insurgent party which has not been recognized by the United States as having belligerent rights. (U. S. *v.* The Itata, 56 Fed. Rep., 508; U. S. *v.* Weed, 5 Wall., 62; The Watchful, 6 Wall., 91.)

In the case of the Horsa, Wiborg *v.* U. S., 163 U. S., 632, decided on appeal in the Supreme Court of the United States on May 25, 1896, it was held "that any combination of men organized to go to Cuba to make war upon its government, provided with arms and ammunition, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, cavalry, or artillery. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, and to have provided themselves with the means of doing so. Whether such provision, as by arming, etc., is necessary need not to be decided in this case. Nor is it important that they intended to make war as an independent body or in connection with others. Where men go without such combination and organization to enlist as individuals in a foreign army, they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important." (See also The Estrella, 4 Wh., 298; The Gran Para, 7 Wh., 471; The Santa Maria, 7 Wh., 490; The Monte Allegre, 7 Wh., 520; U. S. *v.* Reyburn, 6 Pet., 352; U. S. *v.* Quincy, 6 Pet., 445; Wiborg *v.* U. S., 163, U. S., 632)

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1470. *Augmenting the force of a vessel.*—Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year.[1] *Sec. 12, id.*

(This paragraph is founded on section 5285 of the Revised Statutes, which is repealed.)

1471. *Military expedition or enterprise.*—Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years.[2] *Sec. 13, id.*

(This paragraph is founded on section 5286 of the Revised Statutes, which is repealed.)

1472. *Use of the military force.*—The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other

[1] The repair of Mexican war steamers in the port of New York, together with the augmenting their force by adding to the number of their guns, or by changing those originally on board for those of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of this section. But the repair of their bottoms or copper, etc., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers are not liable to seizure by any judicial process under it. (IV Opin. Att. Gen., 336.)

The taking on of a crew of American citizens, or of aliens domiciled in the United States would constitute a violation of this section. (The Alerta, 9 Cranch, 359.)

[2] When a party of insurgents, already organized and carrying on war against the government of a foreign country, send a vessel to procure arms and ammunition in the United States, the act of purchasing such arms and ammunition and placing them aboard the vessel is not within the scope of this section, which prescribes a penalty for every person who, within the limits of the United States, begins or sets on foot, or prepares or provides the means for any military expedition or enterprise "to be carried on from thence." Such expeditions and enterprises must originate within the jurisdiction of the United States, and the

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armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.[1] *Sec. 14, id.*

(This paragraph is the same as section 5287 of the Revised Statutes, as amended by the act of February 18, 1875 (18 Stat. 320), which is repealed.)

1473. *Same.*—It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States. *Sec. 15, id., 1091.*

(This paragraph is founded on section 5288 of the Revised Statutes, which is repealed.)

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terms of the statute do not apply to an expedition originating within the territory of a foreign state. (U. S. *v.* Trumbull, 48 Fed. Rep., 99. For liability of the officers of the ship, see U. S. *v.* Rand, 17 id., 142. See, also, Wiborg *v.* U. S., 163 U. S., 632; U. S. *v.* Ybanez, 53 Fed. Rep., 536; U. S. *v.* Pena, 69 id., 983; U. S. *v.* Hughes, 70 id., 972; U. S. *v.* Hart, 74 id., 724; U. S. *v.* Nuñez, 82 id., 599; U. S. *v.* Murphy, 84 id., 609. Dig. J. A. G., p. 105, 1a.)

The transportation of goods for commercial purposes only, and the carriage of persons separately, though their individual design may be to enlist in a foreign strife, are not prohibited by our law, if the transportation is without any features of a military character. Indications of a military operation or of a military expedition are concert and unity of action, organization of men to act together, the presence of weapons, and some form of command or leadership. When these exist and are known to the persons engaged in the transportation, all who knowingly aid in such transportation for military purposes are liable under section 5286 of the Revised Statutes. U. S. *v.* Nuñez et al., 82 Fed. Rep., 599.)

[1] Ex parte Orozco, 210 Fed. Rep., 106; United States *v.* Chavez, 199 Fed. Rep., 518; 228 U. S., 525.

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1474. *Citizens of a foreign State.*—The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States. *Sec. 18, id.*

(This paragraph is founded on section 5291 of the Revised Statutes, which is repealed.)

1475. *President empowered to issue proclamation.*—That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to read as follows:

That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or of Congress.

SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both. *Joint Resolution No. 10 of March 14, 1912 (37 Stat. 630).*[1]

[1] Under this authority the President issued the following proclamation:

Whereas, a joint resolution of Congress, approved March 14, 1912, reads and provides as follows: "That whenever the President shall find that in any American country conditions of domestic violence which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."

And whereas, it is provided by section 2 of the said joint resolution, "That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding $10,000, or imprisonment not exceeding two years or both":

Now, therefore, I, William Howard Taft, President of the United States of America, acting under and by virtue of the authority conferred in me by the said joint resolution of Congress, do hereby declare and proclaim that I have

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1476. *Extradition.*—Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.[1] *Sec. 5275, R. S.*

1477. *Alaska.*—An act entitled "An act to define and punish crimes in the District of Alaska, and to provide a code of criminal procedure for the District," approved March third, eighteen hundred and ninety-nine, be, and is, amended, by adding to section three hundred and sixty-three thereof the following: "*Provided*, [That] section fifteen [forbidding use of Army as posse comitatus] of an act entitled 'An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes,' approved June eighteenth, eighteen hundred and seventy-eight, shall not be construed to apply to the District of Alaska." *Sec. 29, Act of June 6, 1900 (31 Stat. 330).*

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found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war procured from the United States as contemplated by the said joint resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the joint resolution above set forth, hereby made applicable to Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

The President signed this proclamation March 14, 1912, and it was published April 12, 1912.

A proclamation by the President dated February 3, 1914 (38 Stat. —), revoked the prohibition against the exportation of arms, etc.; and, omitting the preamble, was in the following form:

"Now, therefore, I, Woodrow Wilson, President of the United States of America, hereby declare and proclaim that, as the conditions on which the proclamation of March 14, 1912, was based have essentially changed, and as it is desirable to place the United States with reference to the exportation of arms or munitions of war to Mexico in the same position as other powers, the said proclamation is hereby revoked."

United States *v.* Chavez, 199 Fed. Rep., 518; reversed, 228 U. S., 525.

[1] For the general laws relating to extradition see sections 5270 to 5280, inclusive, Revised Statutes. As to a country under our military control see act of June 6, 1900 (31 Stat. 656); and as to the Philippine Islands see act of February 9, 1903 (32 Stat. 806), and act of February 6, 1905 (33 Stat. 698).

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1478. *Enforcement of law in the Hawaiian Islands.*—That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known. *Sec. 67, Act of Apr. 30, 1900 (31 Stat. 153).*

1479. *Employment of land and naval forces.*—The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or his widow, heir, executor, administrator, or assigns. *Sec. 5577, R. S.*

(This has reference to guano islands. For general legislation covering the subject of guano islands see sections 5570 to 5578, Revised Statutes and the act of March 15, 1878 (20 Stat. 30), and the act of April 14, 1884 (23 Stat. 11).)

1480. *Restriction upon the use of military force.*—From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized [1] by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section and any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment.[2] *Sec. 15, Act of June 18, 1878 (20 Stat. 152).*

[1] As to cases where this authorization has been expressed see preceding paragraphs of this chapter; also article 49, Army Regulations, 1913.

[2] See Dig. Op. J. A. G., pp. 101–103; Winthrop Military Law and Precedents, pp. 1352–1356.

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CHAPTER XXXV.

PENSION LAWS.

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PENSION LAWS.[1]

1481. *Pensions for disabilities.*—Every person specified in the several classes enumerated in the following section, who has been, since the fourth day of March, eighteen hundred and sixty-one, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability.[2] *Sec. 4692, R. S.*

[1] This chapter is not intended to give a full statement of the pension laws, but only so much thereof as will show the general policy of the Government in regard to pensions and furnish the information necessary to enable officers to answer the questions likely to arise in the service. For a full statement of the law on the subject, reference is made to the publication of the Pension Bureau, "Laws of the United States governing the granting of Army and Navy pensions and bounty lands," etc.

[2] The act of March 3, 1885 (23 Stat. 362), contains the requirements that "all applicants for pension shall be presumed to have had no disability at the time of enlistment, but such presumption may be rebutted."

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1482. *Same—Classes of beneficiaries.*—The persons entitled as beneficiaries under the preceding section are as follows:

First. Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.

Second. Any master serving on a gunboat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gunboat or war vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated while in the line of duty, for procuring his subsistence by manual labor.

Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or non-enlisted person, on account of disablity from wounds, or injury received in battle with rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the fourth day of July, eighteen hundred and seventy-four.

Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transitu, or in hospital.

Fifth. Any provost-marshal, deputy provost-marshal, or enrolling officer disabled, by reason of any wound or injury received in the discharge of his duty, to procure a subsistence by manual labor. *Sec. 4693, R. S.*

1483. *Wounds or disease; line of duty.*—No person shall be entitled to a pension by reason of wounds or injury received or disease contracted in the service of the United States subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, unless the person who was wounded, or injured, or contracted the disease was in the line of duty, and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at

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sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States or to some other vessel or naval station or hospital. *Sec. 4694, R. S.*

1484. *Rates of pensions.*—The pension for total disability shall be as follows, namely: For lieutenant-colonel and all officers of higher rank in the military service and in the Marine Corps, and for captain, and all officers of higher rank, commander, surgeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding and master commanding, in the naval service, thirty dollars per month; for major in the military service and in the Marine Corps, and lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, twenty-five dollars per month; for captain in the military service and in the Marine Corps, chaplain in the Army, and provost-marshal, professor of mathematics, master, assistant surgeon, assistant paymaster, and chaplain in the naval service, twenty dollars per month; for first lieutenant in the military service and in the Marine Corps, acting assistant or contract surgeon, and deputy provost-marshal, seventeen dollars per month; for second lieutenant in the military service and in the Marine Corps, first assistant engineer, ensign, and pilot in the naval service, and enrolling officer, fifteen dollars per month; for cadet midshipman, passed midshipman, midshipmen, clerks of admirals and paymasters and of other officer commanding vessels, second and third assistant engineers, master's mate, and all warrant officers in the naval service, ten dollars per month; and for all other persons whose rank or office is not mentioned in this section, eight dollars per month; and the masters, pilots, engineers, sailors, and crews upon the gunboats and war vessels shall be entitled to receive the pension allowed herein to those of like rank in the naval service.[1] *Sec. 4695, R. S.*

1485. *Pension according to rank.*—Every commissioned officer of the Army, Navy, or Marine Corps shall receive such and only such pension as is provided in the preceding section for the rank he held at the time he received the injury or contracted the disease which resulted in the disability, on account of which he may be entitled to a pension; and any commission or Presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: *Provided*, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty, and that he did not willfully neglect or refuse to be mustered. *Sec. 4696, R. S.*

[1] By section 4692, Rev. Stat. (paragraph 1481, ante), an inferior disability shall be rated in proportion to that for total disability.

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1486. *Permanent specific disabilities.*—From and after June fourth, eighteen hundred and seventy-two, all persons entitled by law to a less pension than hereinafter specified, who, while in the military or naval service of the United States, and in line of duty, shall have lost the sight of both eyes, or shall have lost the sight of one eye, the sight of the other having been previously lost, or shall have lost both hands, or shall have lost both feet, or been permanently and totally disabled in the same, or otherwise so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, shall be entitled to a pension of thirty-one dollars and twenty-five cents per month;[1] and all persons who, under like circumstances, shall have lost one hand and one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall be entitled to a pension of twenty-four dollars per month; and all persons who, under like circumstances, shall have lost one hand, or one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of eighteen dollars per month:[2] *Provided*, That all persons who, under like circumstances, have lost a leg above the knee, and in consequence thereof are so disabled that they can not use artificial limbs, shall be rated in the second class and receive twenty-four dollars per month from and after June fourth, eighteen hundred and seventy-two;[3] and all persons who, under like circumstances, shall have lost the hearing of both ears, shall be entitled to a pension of thirteen dollars per month from the same date:[4] *Provided*, That the pension for a disability therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision. *Sec. 4698 R. S.*

[1] Increased to fifty dollars by the act of June 18, 1874 (18 Stat. 78), and to seventy-two dollars by the act of June 17, 1878 (20 id., 144), and June 16, 1880 (21 id., 281), and to one hundred dollars in certain cases (loss of both hands) by the act of February 12, 1889 (25 id., 659). By act of March 3, 1879 (20 Stat. 484), the provision is made to embrace those "who have become totally blind from causes occurring in the service"; and by act of April 8, 1904 (33 Stat. 163), the rate for loss of both eyes or total blindness "from causes occurring in the service" is fixed at one hundred dollars per month.

[2] Increased by the act of February 28, 1877 (19 Stat. 264), and to twenty-four and thirty dollars per month by the act of March 3, 1883 (22 id., 453), and to thirty-six and forty-five dollars per month by the act of August 4, 1886 (24 id., 220), paragraphs 1487, 1488, and 1489, post.

[3] By act of March 3, 1879 (20 Stat. 483) the pension authorized "for amputation of either leg at the hip joint" is thirty-seven dollars and fifty cents per month.

[4] Increased to thirty dollars by the act of August 27, 1888 (25 Stat. 449), which act further authorized "such proportion thereof in cases of partial deafness as the Secretary of the Interior may deem equitable; the amount paid to be determined by the degree of disability existing in each case."

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1487. *Loss of one hand and one foot.*—All persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities, and at such a rate as is provided for by the provisions of the existing laws for each disability: *Provided*, That this act shall not be so construed as to reduce pensions in any case. *Act of Feb. 28, 1877 (19 Stat. 264).*

1488. *Loss of arm or leg.*—From and after the passage of this act all persons on the pension roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand or one foot, or been totally or permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or a foot, shall receive a pension of twenty-four dollars per month; that all persons now on the pension roll, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow, or a leg at or above the knee, or shall have been otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall receive a pension of thirty dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.[1] *Act of Mar. 3, 1883 (22 Stat. 453).*

1489. *Loss of hand or foot, etc.*—From and after the passage of this Act all persons on the pension roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States and in the line of duty, shall have lost one hand or one foot, or been totally disabled in the same, shall receive a pension at the rate of forty dollars per month; that all persons who, in like manner, shall have lost an arm at or above the elbow or a leg at or above the knee, or been totally disabled in the same, shall receive a pension at the rate of forty-six dollars per month; that all persons who, in like manner, shall have lost an arm at the shoulder joint or a leg at the hip joint, or so near the shoulder or hip joint or where the same is in such a condition as to prevent the use of an artificial limb, shall receive a pension at the rate of fifty-five dollars per month, and that all persons who, in like manner, shall have lost one hand and one foot, or been totally disabled in the same, shall receive

[1] Paragraph 1492, post.

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a pension at the rate of sixty dollars per month; and that all persons who, in like manner, shall have lost both feet shall receive a pension at the rate of one hundred dollars per month: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any act, public or private. *Act of Mar. 2, 1903 (32 Stat. 944)*.

1490. *Incapacity, requiring constant attendance.*—All soldiers, sailors, and marines who have since the sixteenth day of June, eighteen hundred and eighty, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service," approved June sixteenth, eighteen hundred and eighty, shall be entitled to receive a pension at the rate of seventy-two dollars per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act. *Act of Mar. 4, 1890 (26 Stat. 16)*.

1491. *Same—requiring frequent attendance.*—Soldiers and sailors who are shown to be totally incapacitated for performing manual labor by reason of injuries received or disease contracted in the service of the United States and in line of duty, and who are thereby disabled to such a degree as to require frequent and periodical, though not regular and constant, personal aid and attendance of another person, shall be entitled to receive a pension of fifty dollars per month from and after the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to the passage of this act. *Act of July 14, 1892 (27 Stat. 149)*.

1492. *Division of $18 rate.*—The rate of eighteen dollars per month may be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.[1] *Sec. 4699, R. S.*

1493. *Not allowed while in Army or Navy.*—Hereafter no pension shall be allowed or paid to any officer, noncommissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list.[2] *Act of Mar. 3, 1891 (26 Stat. 1082)*.

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[1] See act of March 3, 1883 (22 Stat. 453), paragraph 1488, ante.

[2] Section 2 of the act of August 29, 1890 (26 Stat. 371), contained the requirement that "Hereafter no officer of the Army, Navy, or Marine Corps on the retired list shall draw or receive any pension under any law."

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1494. *Absentees.*—Officers absent on sick leave, and enlisted men absent on sick furlough, or on veteran furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital. *Sec. 4700, R. S.*

1495. *Period of service.*—The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization. *Sec. 4701, R. S.*

Widows, Children, and Dependent Relatives.

1496. *Widows or children, etc.*—If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three[1] has died since the fourth day of March, eighteen hundred and sixty-one, or hereafter dies, by reason of any wound, injury, or disease which under the conditions and limitations of such sections would have entitled him to an invalid pension had he been disabled, his widow,[2] or if there be no widow, or in case of her death without payment to her of any part of the pension hereinafter mentioned, his child or children under sixteen years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer; and if the widow remarry, the child or children shall be entitled from the date of remarriage, except when such widow has continued to draw the pension money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid.[3] *Act of Aug. 7, 1882 (22 Stat. 345).*

1497. *Addition for each child under sixteen.*—The pensions of widows shall be increased from and after the twenty-fifth day of July, eighteen hundred and sixty-six, at the rate of two dollars per month for each child under the age of sixteen years of the husband on account of whose death the claim has been, or shall be, granted. And

[1] Paragraphs 1481 and 1482, ante.

[2] Section 4705 provides, as to enlistments on or before March 3, 1873, that "widows of colored and Indian soldiers," etc., "shall be entitled to receive the pension provided by law without other evidence of marriage" than satisfactory proof of the relation to each other therein specified.

[3] Amended by act of March 19, 1886 (24 Stat. 5). See also acts of June 9, 1880 (21 Stat. 170), and June 7, 1888 (25 Stat. 173).

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in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of her pension under the provisions of the pension law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow if living and entitled to a pension: *Provided*, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged it shall be granted and paid to the guardian of such child or children: *Provided further*, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution or in any institution organized for the care of soldiers' orphans. *Sec. 4703, R. S.*

1498. *Increase of pensions.*—From and after the passage of this Act the rate of pension for widows, minor children under the age of sixteen years, and helpless minors as defined by existing laws, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month; and nothing herein shall be construed to affect the existing allowance of two dollars per month for each child under the age of sixteen years and for each helpless child; and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. *Sec. 1, Act of Apr. 19, 1908 (35 Stat. 64).*

1499. *Restriction as to time of marriage.*—Hereafter no pension under any law of the United States shall be granted, allowed, or paid to the widow of a soldier, sailor, officer, naval or military, marine, marine officer, or any other male person entitled to a pension under any law of the United States, unless it shall be proved and established that the marriage of such widow to the soldier, sailor, officer, marine, or other person on account of whose service the pension is asked, was duly and legally contracted and entered into prior to the passage of this act, or unless such wife shall have lived and cohabited with such soldier, sailor, officer, marine, marine officer, or other person continuously from the date of the marriage to the date of his death, or unless the marriage shall take place hereafter and prior to or during the military or naval service of the soldier, sailor, officer, marine, or other person on account of whose service

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the pension is asked or claimed. This proviso shall not apply to or affect the widow of any soldier, sailor, marine, officer, or marine officer serving or who has served in the war between the United States and the Kingdom of Spain. *Act of Mar. 3, 1899* (*30 Stat. 1380*).

1500. *Dependent relatives.*—If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter die, by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support, in whole or in part, at the date of his death, such relative or relatives shall be entitled, in the following order of precedence, to receive the same pension as such person would have been entitled to had he been totally disabled, to commence from the death of such person, namely: First, the mother; secondly, the father; thirdly, orphan brothers and sisters under sixteen years of age, who shall be pensioned jointly: *Provided*, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward: *Provided*, That if in any case said person shall have left father and mother who were dependent upon him, then, on the death of the mother, the father shall become entitled to the pension, commencing from and after the death of the mother; and upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under sixteen years of age shall jointly become entitled to such pension until they attain the age of sixteen years, respectively, commencing from the death or remarriage of the party who had the prior right to the pension: *Provided*, That a mother shall be assumed to have been dependent upon her son within the meaning of this section if, at the date of his death, she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of said son or of any other persons not legally bound to aid in her support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into

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account in estimating a father's means of independent support: *Provided further*, That the pension allowed to any person on account of his or her dependence, as hereinbefore provided, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence. *Sec. 4707, R. S.*

1501. *Remarriage of widow or dependent mother or sister.*—The remarriage of any widow, dependent mother, or dependent sister entitled to pension shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow, dependent mother, or dependent sister having a pension such pension shall cease: *Provided, however*, That any widow who was the lawful wife of any officer or enlisted man or other person in the Army, Navy, or Marine Corps of the United States, as described in paragraphs one, two, and three of section forty-six hundred and ninety-three of the Revised Statutes of the United States, during the period of his service in any war, and whose name was placed or shall hereafter be placed on the pension roll because of her husband's death as the result of wound or injury received or disease contracted in such military or naval service, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced, upon her own application and without fault on her part, and if she is without means of support other than her daily labor, as defined by the Acts of June twenty-seventh, eighteen hundred and ninety, and May ninth, nineteen hundred, shall be entitled to have her name again placed on the pension roll at the rate now provided for widows by the Acts of July fourteenth, eighteen hundred and sixty-two, March third, eighteen hundred and seventy-three, and March nineteenth, eighteen hundred and eighty-six, such pension to commence from the date of the filing of her application in the Pension Bureau after the approval of this Act: *And provided further*, That where such widow is already in receipt of a pension from the United States she shall not be entitled to restoration under this Act: *And provided further*, That where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to restoration under this Act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the restoration of said widow the payment of pension to said child or children shall cease. *Sec. 4708, R. S., as amended by Sec. 1, Act of Feb. 28, 1903 (32 Stat. 920).*

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CHAPTER XXXVI.

THE SOLDIERS' HOME.

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1502. *Board of Commissioners, duties.*—The Board of Commissioners of the Soldiers' Home shall hereafter consist of the General in Chief commanding the Army, the Surgeon-General, the Commissary-General, the Adjutant-General, the Quartermaster-General, the Judge-Advocate-General and the Governor of the Home, and the General in Chief shall be President of the Board, and any four of them shall constitute a quorum for the transaction of business; whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other acts necessary for the government and interests of the same, as authorized by this chapter.[1] *Sec. 4815 R. S., as amended by Sec. 10, Act of Mar. 3, 1883 (22 Stat., 565).*

1503. *Same.*—The commissioners of the Soldiers' Home, by and with the approval of the President, shall procure for immediate use,

[1] The "Military Asylum for the Relief and Support of Invalid and Disabled Soldiers of the Army of the United States" was established by the act of March

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at a suitable place or places, a site or sites for the Soldiers' Home, and if the necessary buildings can not be procured with the sites, to have the same erected, having due regard to the health of the locations, facility of access, and economy, and giving preference to such places as, with the most convenience and least cost, will accommodate the persons entitled to the benefits of the Soldiers' Home. *Sec. 4817, R. S.*

1504. *Same.*—The board of commissioners of the Soldiers' Home shall every year report in writing to the Secretary of War, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested of any changes in the investments and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the Home. The Secretary of War shall have power to call for and require any omitted facts which in his judgment should be stated to be added. This annual report shall be, by the Secretary of War, together with the

3, 1851 (9 Stat. 595). *a* For the support of the institution thus established the following funds were set apart: (a) Any unexpended balance of the appropriation made by the act of March 2, 1847 (9 Stat. 149), for the benefit of soldiers disabled by wounds; (b) the sum of $118,791.19, levied by the commanding general of the Army of the United States in Mexico, during the war with that republic, for the benefit of the soldiers of the United States Army, regulars and volunteers, who were engaged in that war, but taken possession of as funds of the United States and placed in the Treasury; (c) all stoppages and fines adjudged against soldiers by sentence of court-martial, over and above any amount that may be due for the reimbursement of Government or of individuals; (d) all forfeitures on account of desertion; (e) all moneys, not exceeding two-thirds of the balance on hand of the hospital fund, and of the post fund of each military station, after deducting the necessary expenses of the year; and (f) all moneys belonging to the estates of deceased soldiers, which now are or may hereafter be unclaimed for the period of three years subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased; *b* there shall also be "deducted from the pay of every noncommissioned officer, musician, artificer, and private of the Army of the United States the sum of 25 cents *c* per month, which sum so deducted shall, by the Pay Department of the Army, be passed to the credit of the commissioners of the asylum, who are hereby authorized to receive all donations of money or property made by any person or persons for the benefit of the institution, and hold the same for its sole and exclusive use." (Sec. 7, act of March 3, 1851, 9 Stat. 596.)

In passing upon recommendations made by the board of commissioners of the Soldiers' Home, under section 4815 of the Revised Statutes, the Secretary of War is invested with a discretionary power to approve or disapprove the same. (XVII Opin. Att. Gen., 449.)

a The act of Congress establishing the Military Asylum does not constitute the commissioners a corporation with capacity to sue and be sued. (V Opin. Att. Gen., 398; see note 1 to paragraph 1512, post.)

b This clause was repealed by section 2 of the act of July 5, 1862 (12 Stat. 508).

c The deduction from the monthly pay of enlisted men, fixed at 25 cents per month by section 7, act of March 3, 1851 (9 Stat. 596), was reduced to 12½ cents by section 7, act of March 3, 1859 (11 Stat. 424), and was abolished by the act of May 11, 1908 (35 Stat. 110).

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report of the inspecting officer hereinafter provided for, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library.[1] *Sec. 1, Act of Mar. 3, 1883 (22 Stat. 564).*

1505. *Officers.*—The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also the treasurer; and the officers shall be taken from the Army and appointed or removed, from time to time, as the interests of the institution may require, by the Secretary of War, on the recommendation of the board of commissioners.[2] *Sec. 4816, R. S.*

1506. *Same—Selection—Treasurer required to give bond.*—The governor and all other officers of the Home shall be selected by the President of the United States, and the treasurer of the Home shall be required to give a bond in the penal sum of twenty thousand dollars for the faithful performance of his duty.[3] *Sec. 7 Act of Mar. 3, 1883 (22 Stat. 565).*

1507. *Funds for the support of the Home, how obtained.*—For the support of the Soldiers' Home the following funds are set apart and are hereby appropriated: All stoppages or fines adjudged against soldiers by sentence of courts-martial over and above any amount that may be due for the reimbursement of Government or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers which are or may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution upon the demand of the heirs or legal representatives of the deceased. *Sec. 4818, R. S.*

1508. *Same.*—There shall be deducted from the pay of every noncommissioned officer, musician, artificer, and private of the Army of the United States the sum of twelve and a half cents per month, which sum so deducted shall by the Pay Department of the Army

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[1] Section 2 of the Act of March 3, 1883, provides for an annual inspection of the Home by the Inspector General of the Army. (See par. 464, ante, under the chapter entitled, The Inspector General's Department.)

[2] The commissioners of the Soldiers' Home may permit the governor, deputy governor, and treasurer of the Home, who are retired officers of the Army and who reside at the Home, to make use of ordinary supplies of fuel, light, forage, etc., produced at the Home or purchased for it, and they may pay the treasurer, out of the funds of the Home, a salary for his services. (XX Opin. Att. Gen., 350.)

See Dig. Opin. J. A. G., pp. 1010 and 1011, edition, 1912.

[3] The board of commissioners of the Soldiers' Home can not delegate to the governor of the Home discretionary police authority for the preservation of good order within its limits. (XX Opin. Att. Gen., 514.) They can not empower him to arrest, detain, or deliver over to the court authorities nonmilitary persons committing crimes less than capital, except in the cases where any person may make an arrest without warrant or precept. (Id.)

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be passed to the credit of the commissioners of the Soldiers' Home. The commissioners are also authorized to receive all donations of money or property made by any person for the benefit of the institution and hold the same for its sole and exclusive use. But the deduction of twelve and a half cents per month from the pay of noncommissioned officers, musicians, artificers, and privates of regiments of volunteers or other corps or regiments raised for a limited period or for a temporary purpose or purposes shall only be made with their consent.[1] *Sec. 4819, R. S.*

1509. *Limit to adjustment of accounts.*—Hereafter the adjustment of the accounts of the Soldiers' Home under section 4818 of the Revised Statutes[2] in the offices of the Second Comptroller and Second Auditor shall be limited to those originating subsequent to March 3, 1881. *Act of July 16, 1892 (27 Stat. 193).*

1510. *Permanent fund of the Home.*—That all funds of the Home not needed for current use, and which are not now invested in United States registered bonds, shall, as soon as received, or as soon as present investments can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the Home as a permanent fund, and shall draw interest at the rate of three per centum per annum, which shall be paid quarterly to the treasurer of the Home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like maner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of War. *Sec. 8, Act of Mar. 3, 1883 (22 Stat. 565).*

1511. *The Treasurer of the United States the depositary of the funds of the Home.*—That the Treasurer of the United States be, and he is hereby, authorized and directed to receive and keep on deposit, subject to the checks or drafts of the treasurer of the Soldiers' Home in the District of Columbia, all funds which may now be under the control of the said treasurer of the Soldiers' Home, or may hereafter be furnished him or in any manner come into his possession for use in defraying the curent expenses of maintaining the said Soldiers' Home, and, upon the request of said treasurer of the Soldiers' Home, there shall be transferred, from funds to his credit with the United States Treasurer, and placed to his credit with the assistant treasurer of the United States in New York City, New York, such sums as he may require monthly or quarterly for payments on account of "outdoor relief" to members of the said Sol-

[1] The deduction of pay for the Soldiers' Home was abolished by the act of May 11, 1908 (35 Stat. 110).

[2] For this section see paragraph 1507, ante.

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diers' Home residing at a distance therefrom. *Act of Jan. 16, 1891 (26 Stat. 718).*

1512. *Limitation on expenditures.*—No new buildings shall be erected or new grounds purchased, nor shall any expenditure of more than five thousand dollars be made, until the action of the board thereon shall be approved by the Secretary of War. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract.[1] *Sec. 3, Act of Mar. 3, 1883 (22 Stat. 564).*

1513. *Borrowing money on credit of Home prohibited.*—No officers of the Home shall borrow any money on the credit of the Home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid. *Sec. 9, id., 565.*

1514. *Who may become members of the Home.*—All soldiers of the Army of the United States, and all soldiers who have been, or may hereafter be, of the Army of the United States, and who have contributed, or may hereafter contribute, according to section forty-eight hundred and nineteen, to the support of the Soldiers' Home hereby created, and the invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve and of all subsequent wars, shall, under the restrictions and provisions which follow, be members of the Soldiers' Home, with all the rights annexed thereto.[2] *Sec. 4814, R. S.*

(The contribution provided for in sec. 4819, R. S., was abolished by the act of May 11, 1908, 35 Stat. 110.)

1515. *What persons are entitled to its benefits.*—The following persons, members of the Soldiers' Home, according to section forty-eight hundred and fourteen, shall be entitled to the rights and benefits herein conferred, and no others:

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[1] Contracts for the Home should be entered into, not by the "Soldiers' Home," which is not an incorporated institution, but by the board of commissioners, who, as trustees for the Home, may make contracts which will bind the United States. (Dig. Opin., J. A. G., par. 2330. Ed. 1901.)

Section 11 of the act of March 3, 1883 (22 Stat. p. 565), contains the provision "that all laws and parts of laws relating to the Soldiers' Home now in force and not inconsistent with this act are continued in force, and such as are inconsistent herewith are to that extent repealed." Section 12 of the same act contained the requirement that "the sum of ten thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to be expended by the Secretary of the Treasury in the employment of additional clerical force to be used in adjusting the accounts in the Treasury Department of those funds which under the law belong to the Soldiers' Home."

[2] This section and 4819 recognize two classes of beneficiaries: 1. Soldiers who, while in the service, contributed voluntarily to the support of the Home. 2. Soldiers who did not contribute. Those who contributed have a right to membership without surrendering their pensions to the Home. Under section 4820 of the Revised Statutes, those who did not contribute may become members by making such surrender. (Bowen *v.* U. S., 100 U. S., 508; id., 14 Ct. Cls., 162.)

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First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regular or volunteers, of the wars of eighteen hundred and twelve and of all subsequent wars. *Sec. 4821, R. S.*

1516. *Who are excluded.*—The benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners. *Sec. 4822, R. S.*

1517. *Who shall be discharged.*—Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged.[1] *Sec. 4823, R. S.*

1518. *Outdoor relief.*—That the board of commissioners are authorized to aid persons who are entitled to admission to the Home, by outdoor relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an inmate of the Home. *Sec. 6, Act of Mar. 3, 1883 (22 Stat. 565).*

1519. *Rights of pensioners and surrender of pensions.*—The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits.[2] *Sec. 4820, R. S.*

1520. *Allotment of their pensions by inmates, payment of pensions not assigned to Treasurer, etc.*—Any inmate of the Home who is receiving a pension from the Government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent

[1] See Dig. Opin. J. A. G., 1010, I. B., edition 1912.

[2] Section 4820, Revised Statutes, admits of no other reasonable construction than that only invalid pensioners who had not contributed to the funds of the Soldiers' Home were bound to surrender to it their pensions while receiving its benefits. (U. S. *v.* Bowen, 100 U. S., 508; see paragraph 1520, post)

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from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home. *Sec. 4, Act of Mar. 3, 1883 (22 Stat. 564).*

1521. *Inmates subject to Articles of War.*—All persons admitted into the Soldiers' Home shall be subject to the Rules and Articles of War in the same manner as soldiers in the Army.[1] *Sec. 4824, R. S.*

1522. *Uniforms to be furnished inmates free of cost.*—A suitable uniform shall be furnished to every inmate of the Home, without cost to him. *Sec. 5, Act of Mar. 3, 1883 (22 Stat. 565).*

1523. *Liquor licenses prohibited within 1 mile of the Home.*—On and after the passage of this act no license for the sale of intoxicating liquor at any place within one mile of the Soldiers' Home property in the District of Columbia shall be granted. *Act of Feb. 28, 1891 (26 Stat. 797).*

NOTE.—The National Home for Disabled Volunteer Soldiers.

The National Home for Disabled Volunteer Soldiers was established under authority of act of Congress of March 3, 1865 (13 Stat. 509). This act was amended by the following acts:

Act of March 21, 1866 (14 Stat. 10);
Act of March 12, 1867 (15 Stat. 1);
Joint resolution of June 8, 1868 (15 Stat. 253);
Joint resolution of February 28, 1871 (16 Stat. 599);
Act of January 23, 1873 (17 Stat. 417);
Act of March 3, 1875 (18 Stat. 359);
Joint resolution of February 26, 1875 (18 Stat. 524).

These various acts were carried forward into the Revised Statutes and there appear in chapter 3, title 59, from sections 4825 to 4837, inclusive.

Since the enactment of the Revised Statutes the most important acts relating to the National Home for Disabled Volunteer Soldiers, are: 18 Stat. 359; 20 Stat. 390; 21 Stat. 350, 447; 22 Stat. 322, 330; 24 Stat. 129, 251, 540; 25 Stat. 387, 543, 657, 855; 27 Stat. 15, 384; 28 Stat. 159, 412, 492; 29 Stat. 445, 517; 30 Stat. 54, 105, 640, 668, 1073, 1379; 31 Stat. 636, 745, 1175, 1178; 33 Stat. 731; 35 Stat. 1012.

[1] See Dig. Opinion. J. A. G., 1010 I A.

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Under authority conferred by separate statutes branch homes have been established at the following places:

The Central Branch, at Dayton, Ohio.
The Northwestern Branch, at Milwaukee, Wis.
The Eastern Branch, at Togus, Me.
The Southern Branch, at Hampton, Va.
The Western Branch, at Leavenworth, Kans.
The Pacific Branch, at Santa Monica, Cal.
The Marion Branch, at Marion, Ind.
The Danville Branch, at Danville, Ill.
The Johnson City Branch, at Johnson City, Tenn.
Battle Mountain Sanitarium, Hot Springs, S. Dak.

As to aid offered States and Territorial homes for disabled soldiers see the following acts: Sec. 4825, R. S.; 25 Stat. 450, 975; 30 Stat. 1379.

Admissions to the home.—Hereafter the following persons only shall be entitled to the benefits of the National Home for Disabled Volunteer Soldiers and may be admitted thereto upon the order of a member of the board of managers, namely: All honorably discharged officers, soldiers, and sailors who served in the regular or volunteer forces of the United States in any war in which the country has been engaged, who are disabled by disease, wounds, or otherwise, and who have no adequate means of support, and by reason of such disability are incapable of earning their living. (Act of May 26, 1900, 31 Stat. 217.)

All honorably discharged soldiers and sailors who served in the War of the Rebellion and the Spanish-American War, and the provisional army and the volunteer soldiers and sailors of the War of 1812 and of the Mexican War, who are disabled by age, disease, or otherwise, and by reason of such disability are incapable of earning a living, shall be admitted into the Home for Disabled Volunteer Soldiers. (Act of January 28, 1901, 31 Stat. 745.)

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CHAPTER XXXVII.

CARE OF THE INSANE.

	Par.		Par.
Government Hospital for the Insane	1524–1527	In California asylums	1526
Establishment	1524	Insane Filipino soldiers	1527
Admissions; insane of Army, etc.	1525		

GOVERNMENT HOSPITAL FOR THE INSANE.[1]

1524. *Establishment.*—There shall be in the District of Columbia a Government Hospital for the Insane, and its objects shall be the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia. *Sec. 4838, R. S.*

1525. *Admissions; insane of Army, etc.*—The superintendent, upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

First. Insane persons belonging to the Army, Navy, Marine Corps, and Revenue-Cutter Service.

Second. Civilians employed in the Quartermaster's, Pay, and Subsistence Departments of the Army who may be, or may hereafter become, insane while in such employment. *Sec. 4843, R. S., as amended by Act of Feb. 9, 1900 (31 Stat. 7).*

Third. Men who, while in the service of the United States, in the Army, Navy, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

[1] The sundry civil act of June 25, 1910 (35 Stat. 703), contained an item (p. 724) "for the care, maintenance, and treatment at asylums in Porto Rico of insane soldiers of the Porto Rico Regiment of Infantry"; and since then provision has been made for the purpose in the annual acts for the support of the Army.

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Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service.[1] *Sec. 4843, R. S., as amended by Act of Feb. 9, 1900 (31 Stat. 7).*

1526. *In California asylums.*—The Secretary of War may, in his discretion, contract for the care, maintenance, and treatment of the insane of the Army, and inmates of the National Home for Disabled Volunteer Soldiers on the Pacific coast at any State asylum in California, in all cases which he is now authorized by law to cause to be sent to the Government Hospital for the Insane in the District of Columbia. *Act of Mar. 3, 1901 (31 Stat. 1163).*

1527. *Insane Filipino soldiers.*—The Secretary of War may, in his discretion contract for the care, maintenance, and treatment of the insane natives of the Philippine Islands serving in the Army of the United States at any asylum in the Philippine Islands in all cases which he is now authorized by law to cause to be sent to the Government Hospital for the Insane in the District of Columbia. *Act of May 11, 1908 (35 Stat. 122).*

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[1] The right to admission to the asylum has been extended by statute to include the following classes of cases:

(1) To insane convicts serving sentences of confinement imposed by United States courts. (Act of June 23, 1874, 18 Stat. 251.)

(2) To persons in custody charged with crime against the United States. (Act of Aug. 7, 1882, 22 Stat. 202.)

(3) To inmates of the several branches of the National Home for Disabled Volunteer Soldiers who may become insane. (Act of Aug. 7, 1882, 22 Stat. 302.)

(4) To inmates of the Soldiers' Home who may become insane. (Act of July 7, 1884, 23 Stat. 194.) The expense of maintenance to be paid from the Soldiers' Home fund.

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CHAPTER XXXVIII.

FLAG AND SEAL OF THE UNITED STATES.

	Par.		Par.
The flag to be thirteen stripes and forty-eight stars	1528	Seal of the United States	1530
A star to be added for every new State	1529	Secretary of State to keep and affix the seal	1531

1528. *The flag to be thirteen stripes and forty-eight stars.*—The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be [forty-eight] stars, white in a blue field.[1] *Sec. 1791, R. S.*

1529. *A star to be added for every new State.*—On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission.[2] *Sec. 1792, R. S.*

1530. *Seal of the United States.*—The seal heretofore used by the United States in Congress assembled is declared to be the seal of the United States. *Sec. 1793, R. S.*

1531. *Secretary of State to keep and affix the seal.*—The Secretary of State shall keep such seal, and shall make out and record, and shall affix the same to, all civil commissions for officers of the United States,[3] to be appointed by the President, by and with the advice and consent of the Senate, or by the President alone. But the seal shall not be affixed to any commission before the same has been signed by the President of the United States, nor to any other instrument, without the special warrant of the President therefor. *Sec. 1794, R. S.*

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[1] See pars. 215 and 216 A. R., 1913. Also Bulletins 11 and 23, War Department, 1912.

[2] See Dig. Opin. J. A. G., 629 I–V and 20 I, edition 1912.

[3] The commissions of military officers now bear the seal of the War Department. (Act of Mar. 28, 1896, 29 Stat. 75.)

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CHAPTER XXXIX.

THE ARTICLES OF WAR.[1]

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HISTORICAL NOTE.[1]

1. *British Code.*—In the early periods of English history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, articles of war, were issued by the Crown, with the advice of the constable or of the peers or other experienced persons, or were enacted by the commander in chief in pursuance of an authority for that purpose given in his commission from the Crown. (Grose, Antiquities, vol. 2, p. 58.)

These ordinances or articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law in time of peace did not come into existence until the passing of the first mutiny act in 1689.

The system of governing troops in active service by articles of war, issued under the prerogative power of the Crown, whether issued by the King himself

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or by the commanders in chief, or by other officers holding commissions from the Crown, continued from the time of the conquest till long after the passing of the annual mutiny acts (Barwis v. Keppel, 2 Wilson's Rep., 314), and did not actually cease till the prerogative power of issuing such articles was superseded in 1803 by a corresponding statutory power. (43 Geo. III. ch. 20.)

The earlier articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed something of the shape which they bear in modern times, and the ordinances or articles of war issued by Charles II in 1672 formed the groundwork of the articles of war of 1878, which were consolidated with the mutiny act in the army discipline and regulation act of 1879, which was replaced by the army act of 1881. The army code of 1881, which now constitutes the military code of the British Army, has of itself no force, but requires to be brought into operation annually by another act of Parliament, thus securing the constitutional principle of the control of the Parliament over the discipline requisite for the government of the army. (Manual of Military Law, War Office, 1914, pp. 6–14.)

2. *American code—(a) Code of 1775.*—Passing over the earlier enactments of the American Colonies of articles of war for the government of their respective contingents, of which we have examples in the articles adopted by the Provisional Congress of Massachusetts Bay, April 5, 1775 (American Archives, 4th series, vol. 1, p. 1350), followed by similar articles adopted in May and June of the same year, successively, by the Provincial Assemblies of Connecticut and Rhode Island and the Congress of New Hampshire (idem, vol. 2, pp. 565, 1153, 1180), we come to the first American articles—Code of 1775—enacted by the

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Second Continental Congress, June 30, 1775. Of this code, comprising 69 articles, the original was the existing British Code of 1774, from which said articles were largely copied. The code was amended by the Continental Congress of November 7, 1775, by adding thereto 16 provisions, intended to complete the original draft in certain particulars in which it was imperfect.

(*b*) *Code of 1776.*—The Articles of 1775 were superseded the following year by what has since been known as the Code of 1776, enacted September 20 of that year. It was an enlargement, with modifications, of the amended Code of 1775. There followed the amendments of 1786, regulating the composition of courts-martial, and generally the administration of military justice. As thus amended the code survived the adoption of the Constitution of the United States, being continued in force by successive statutes, "so far as the same are applicable to the Constitution of the United States." The necessity, however, for revision, in order to adapt the articles to the changed form of government, became obvious. This revision was accomplished by the act of April 10, 1806 (2 Stat., 259), which superseded all other enactments on the same subject, and is generally designated as the

(*c*) *Code of 1806.*—The Code of 1806 comprised 101 articles, with an additional provision relating to the punishment of spies. There was no formal revision of the Articles of War in the revision of the Statutes of 1874, although there was such a restatement of them as was possible under the authority which the revisers who prepared that revision had to bring together "all statutes which, from similarity of subject, ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the original text." Under this limited authority no

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SECTION 1342, as amended.—Section thirteen hundred and forty-two of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

SEC. 1342. The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States.[1] *Sec. 3, Act of Aug. 29, 1916 (39 Stat. 650).*

I. PRELIMINARY PROVISIONS.

ARTICLE 1. *Definitions.*—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

(a) The word "officer" shall be construed to refer to a commissioned officer;

(b) The word "soldier" shall be construed as including a noncommissioned officer, a private, or any other enlisted man;

(c) The word "company" shall be understood as including a troop or battery; and

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recasting of the articles or substantial amendment was possible, and the code as it appeared in the Revised Statutes of 1874, and as it was repeated in the second edition thereof in 1878, was substantially the Code of 1806, expanded to embrace amendments and new legislation since that date. It embraced 128 articles, with the additional provision as to spies, and these, with the amendments enacted since 1878, remained for 110 years the military code of the United States.

(*d*) *Code of 1916.*—The Code of 1916 was enacted August 29, 1916 (39 Stat., 650). It became effective on March 1, 1917, except as to certain articles which were made immediately effective in order to meet conditions confronting the punitive expedition then in Mexico. For a list of the more important changes introduced by the revised articles, see the Introduction to the First Edition, Manual for Courts-Martial.

[1] The Army and Navy of the United States are engaged in the performance of public, not private, duties. Service in the army or navy of one's country, according to the terms of the enlistment, never implies slavery or involuntary servitude, even where the soldier or sailor is required against his will to respect the terms upon which he voluntarily engaged to serve the public. Involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not, in any legal sense, either slavery or involuntary servitude. (Robertson *v.* Baldwin, 165 U. S. 275, 299.) (Dissenting opinion of Justice Harlan.)

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(d) The word "battalion" shall be understood as including a squadron.

ART. 2. *Persons subject to military law.*[1]—The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law," or "persons subject to military law," whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article two, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction, unless otherwise specifically provided by law.

(a) All officers and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

(b) Cadets;

(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;[2]

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[1] Military offenses are not territorial. (See Manual for Courts-Martial, ed. 1908, p. 14.) So *held* that an officer who exhibited himself in an intoxicated condition at a public ball in Mexico, though not present in any military capacity, was amenable for his offense to the jurisdiction of a court-martial in Texas. (Dig. Op. J. A. G. par. 169, ed. 1901; Houston *v.* Moore, 5 Wh. 20.)

[2] To determine when an army is "in the field" is to decide the question raised. These words imply military operations with a view to an enemy. Hostilities with Indians seem to be as much within their meaning as any other kind of warfare. To enable the officers of an army to preserve good order and discipline is the object of this article, and these may be as necessary in the face of hostile savages as in the front of any other enemy. When an army is engaged in offensive or defensive operations, I think it is safe to say that it is an army "in the field."

To decide exactly where the boundary line runs between civil and military jurisdiction, as to the civilians attached to an army, is difficult; but it is quite evident that they are within military jurisdiction, as provided for in said article, when their treachery, defection, or insubordination might endanger or embarrass the army to which they belong in its operations against what is known

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(e) All persons under sentence adjudged by courts-martial;

(f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

II. COURTS-MARTIAL.

ART. 3. *Courts-martial classified.*—Courts-martial shall be of three kinds, namely:

First, general courts-martial;

Second, special courts-martial; and

Third, summary courts-martial.

A. COMPOSITION.

ART. 4. *Who may serve on courts-martial.*—All officers in the military service of the United States, and officers of the Marine Corps, when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.[1]

ART. 5. *General courts-martial.*—General courts-martial may consist of any number of officers from five to thirteen, inclusive; but

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in military phrase as "an enemy." Possibly the fact that troops found in a region of country chiefly inhabited by Indians, and remote from the exercise of civil authority, may enter into the description of "an army in the field." Persons who attach themselves to an expedition against hostile Indians may be understood as agreeing that they will submit themselves, for the time being, to military control. (XIV Opin. Att. Gen. 22; G. O. 17, A. G. O. 1872.)

A civil employee of the United States in time of peace is most clearly not made amenable to the military jurisdiction and trial by court-martial by the fact that he is employed in an office connected with the administration of the military branch of the Government. Such employment does not make him a part of the Military Establishment, nor is his offense, however nearly it may affect the military service, "a case arising in the land forces" in the sense of article 5 of the amendments to the Constitution. So *held* (June, 1877) that a civilian clerk employed in time of peace in the office of the chief quartermaster at San Francisco was manifestly not amenable, under this article or otherwise, to trial by court-martial for the embezzlement or misapplication of Government funds appropriated for the Quartermaster Department. (See the confirmatory opinion in this case of the Attorney General of May 15, 1878, XVI Opin. 13.) And remarked that if this official could be made liable to such jurisdiction, all the male and female clerks employed in the War Department might upon the same principle be held thus amenable for offenses against the Government committed in connection with their duties. And so *held* in the case of a civilian clerk employed at Camp Robinson, Nebr., charged with conspiring with contractors to defraud the United States, the post not being within the theater of any Indian war or hostilities pending at the period of the offense. (See opinion, to a similar effect, of the Attorney General of June 15, 1878, XVI Opins. 48.) Id. par. 167. (Dig. Op. J. A. G. ed. 1901.)

Held (April, 1877), that superintendents of national cemeteries, being no part of the Army, but civilians (see section 4874, Revised Statutes), were clearly not amenable to military jurisdiction or trial under this article or otherwise. (See, to the same effect, the opinion of the Attorney General of May 15, 1878, XVI Opin. 13, referred to above.) (Dig. Op. J. A. G. par. 168, ed. 1901.)

[1] See Dig. Op. J. A. G. 158 LXXVII, A 1, 2, 3.

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they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service.

ART. 6. *Special courts-martial.*—Special courts-martial may consist of any number of officers from three to five, inclusive.

ART. 7. *Summary courts-martial.*—A summary court-martial shall consist of one officer.

B. BY WHOM APPOINTED.

ART. 8. *General courts-martial.*—The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by a superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 9. *Special courts-martial.*—The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 10. *Summary courts-martial.*—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

ART. 11. *Appointment of judge advocates.*—For each general or special court-martial the authority appointing the court shall appoint a judge advocate and for each general court-martial one or more assistant judge advocates when necessary.

C. JURISDICTION.

ART. 12. *General courts-martial.*—General courts-martial shall have power to try any person subject to military law for any crime

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or offense made punishable by these articles and any other person who by the law of war is subject to trial by military tribunals: *Provided*, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy.

ART. 13. *Special courts-martial.* — Special courts-martial shall have power to try any person subject to military law, except an officer, for any crime or offense not capital made punishable by these articles: *Provided*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

Special courts-martial shall not have power to adjudge dishonorable discharge, nor confinement in excess of six months, nor to adjudge forfeiture of more than six months' pay.

ART. 14. *Summary courts-martial.*—Summary courts-martial shall have power to try any person subject to military law, except an officer, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general court-martial: *Provided further*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months' pay: *Provided*, That when the summary court officer is also the commanding officer no sentence of such summary court-martial adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority.

ART. 15. *Not exclusive.*—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by the law of war may be lawfully triable by such military commissions, provost courts, or other military tribunals.

ART. 16. *Officers; how triable.*—Officers shall be triable only by general courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank.[1]

[1] See Dig. Op. J. A. G., 493, 1e.

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D. PROCEDURE.

ART. 17. *Judge advocate to prosecute.*—The judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented before the court by counsel of his own selection for his defense, if such counsel be reasonably available, but should he, for any reason, be unrepresented by counsel, the judge advocate shall from time to time throughout the proceedings advise the accused of his legal rights.[1]

ART. 18. *Challenges.*—Members of a general or special court-martial may be challenged by the accused, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.[2]

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[1] For decisions upon the subject of judge advocate, see Dig. Op. J. A. G., 496 to 503.

[2] This article authorizes the exercise of the right of challenge before all courts except summary courts. These courts are not subject to be challenged, because, being composed of but one member, there is no authority provided which is competent to pass upon the validity of the challenge.

At the trial of an officer in 1853 the accused challenged a member of the court "for bias, prejudice, and malice." The challenged member thereupon stated "that he had no prejudice or bias against the accused which could in the remotest degree interfere with his doing justice in the case," but, "being challenged, he requested to be relieved from sitting on the court," which the court refused, and overruled the challenge. The accused then requested that the member might be put on his voir dire in order that he might examine him as to the extent of any prejudice he might entertain, which application the court also refused. This refusal of the right of an accused person to place a challenged member on his voir dire, in order to ascertain whether the grounds of challenge advanced by him were or were not sufficient, was disapproved by the Secretary of War upon the ground that "an accused is now allowed in all cases, for the better security of an impartial trial, to show the mind of the juror by examining him before the court, and the only exception is where the cause of the challenge goes to the disgrace or discredit of the juror." (G. O. No. 21, War Dept., of 1853.)

In the case of an enlisted man tried in 1875, the judge advocate of the court was the principal witness against the prisoner and was directly interested in his conviction. In this case it was remarked by the reviewing officer (the Secretary of War) that "it was not contemplated that a prisoner would be brought to trial before this court on charges which raised the question whether its judge advocate had not himself been guilty of official misconduct. But such was the fact in this case. The judge advocate had a personal interest in the conviction of the prisoner and was also the principal witness against him." Under such circumstances the officer should have applied to the proper authority to be relieved from duty as judge advocate. The proceedings were disapproved. (G. C. M. O. No. 41, War Dept., 1875; see also G. C. M. O. 66, 1875. See Dig. Op. J. A. G. 502 IV–N.)

The accused were Indian scouts, charged with mutiny. Some of the members of the court, though disclaiming any prejudice against the accused personally, were aware that they were present at the outbreak, and were fully apprised, from their own personal presence or knowledge of the circumstances, that the mutiny, which had involved homicide, constituted a most aggravated offense of the class. *Held* that as these members could scarcely avoid applying their impressions to the accused when shown to be connected with the disorder, they would fairly have been subject to objection as triers. (Id., par. 253, Ed. 1901.)

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ART. 19. *Oaths.*—The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B. do swear (or affirm) that you will well and truly try and determine,[1] according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge advocate and to each assistant judge advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."[2]

It is not necessary (though usual and proper) for a member to withdraw from the court room on being challenged and pending the deliberation on the objection. (See Dig. Op. J. A. G., 163, LXXXVIII A. B. C.; 550–551 C 2, C 2 a; 562 a (15); 573 E 10; 575 F 7; 1070 (d) [1].)

[1] It is a departure from the engagement expressed in the body of the oath—to try and determine according to evidence, and administer justice according to the Articles of War, etc.—for a court-martial to determine a case either upon personal knowledge of the facts possessed by the members and not put in evidence, or according to the private views of justice of the members independently of the provisions of the code. (Dig. Op. J. A. G. 97, par. 3. Ed. 1901. See Dig. Op. J. A. G. 161, LXXXIV A to 162 LXXXVI A. Compare G. O. 21, Department of the Ohio, 1866; G. C. M. O. 41, Department of Texas, 1874.)

[2] This article prescribes a single specific form of oath to be taken by all witnesses. The Constitution, however (article 1 of amendment), has provided that Congress shall make no law prohibiting the free exercise of religion. Where, therefore, the prescribed form is not in accordance with the religious tenets of a witness, he should be permitted to be sworn according to the ceremonies of his own faith or as he may deem binding on his conscience. (See 1 Greenl. Ev., sec. 371; O'Brien, 260. Dig. Op. J. A. G., par. 274, note 2, ed. 1901.)

The article does not prescribe by whom the oath shall be administered. By the custom of the service it is administered by the judge advocate. (And see

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Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following

now the provision of the act of July 27, 1892, sec. 4.) When the judge advocate himself takes the witness stand, he is properly sworn by the president of the court. (Id., par. 274.)

That courts-martial follow in general, so far as apposite, the common-law rules of evidence as observed by the United States courts in criminal cases, see Manual for Courts-Martial.

The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held. (Act of June 29, 1906, 34 Stat. 618.)

In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him. (Act of Mar. 16, 1878, 20 Stat. 30.)

That in any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness. (Act of Feb. 26, 1913, 37 Stat. 683.)

The jury in a criminal case are not bound by the expert evidence as to handwriting any further than it coincides with their own opinion or than they think it deserves to be credited. (U. S. *v.* Molloy, 31 Fed. Rep. 19.)

Documentary evidence.—Copies of any books, records, papers, or documents in any of the executive departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof. (Sec. 882, R. S.)

See in this connection, Dig. Op. J. A. G. 533, 17a (1) to 536, 17c.

Copies of any documents, records, books, or papers in the office of the Solicitor of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as solicitor for the time, shall be evidence equally with the originals. (Sec. 883, R. S.)

When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Secretary or an Assistant Secretary of the Treasury and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by such auditor to be true copies of the originals on file, and authenticated under the seal of the department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit. (Sec. 17, act of July 31, 1894, 28 Stat. 210; Walton *v.* U. S. 9 Wh. 651; U. S. *v.* Buford, 3 Pet. 12; Smith *v.* U. S. 5 Pet. 292; Cox *v.* U. S. 6 Pet. 172; U. S. *v.* Jones, 8 Pet. 375; Gratiot *v.* U. S. 15 Pet. 336; U. S. *v.* Irving, 1 How. 250; Hoyt *v.* U. S. 10 How 109; Bruce *v.* U. S. 17 How. 437; U. S. *v.* Edwards, 1 McLean, 467; U. S. *v.* Hilliard et al. 3 McLean, 324; U. S. *v.* Lent, 1 Paine, 417; U. S. *v.* Martin, 2 Paine, 68; U. S. *v.* Van Zandt, 2 Cr. C. C.)

Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance

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form: "You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section. (Sec. 887, R. S.)

A copy of any return of a contract returned and filed in the returns office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by the seal of the department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns office. (Sec. 888, R. S.)

Extracts from the Journals of the Senate or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court. (Sec. 895, R. S.)

Copies of all official documents and papers in the office of any consul, vice consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States. (Sec. 896, R. S.)

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken. (Sec. 905, R. S.) (Ferguson *v.* Harwood, 7 Cr. 408; Mills *v.* Duryea, 7 Cr. 481; U. S. *v.* Amedy, 11 Wh. 392; Buckner *v.* Finley, 2 Pet. 592; Owings *v.* Hull, 9 Pet. 627; Urtetiqui *v.* D'Arbel, 9 Pet. 700; McElmoyle *v.* Cohen, 13 Pet. 312; Stacey *v.* Thrasher, 6 How. 44; Bank of Alabama *v.* Dalton, 9 How. 522; D'Arcy *v.* Ketchum, 11 How. 165; Railroad *v.* Howard, 13 How. 307; Booth *v.* Clark, 17 How. 322; Mason *v.* Lawrason, 1 Cr. C. C. 190; Buford *v.* Hickman, Hemp. 232; Craig *v.* Brown, Pet. C. C. 354; Stewart *v.* Gray, Hemp. 94; Gardner *v.* Lindo, 1 Cr. C. C. 78; Trigg *v.* Conway, Hemp. 538; Turner *v.* Waddington, 3 Wash. C. C. 126; Catlin *v.* Underhill, 4 McL. 199; Morgan *v.* Curtenius, 4 McL. 366; Hale *v.* Brotherton, 3 Cr. C. C. 594; Mewster *v.* Spalding, 6 McL. 24; Parrot *v.* Habersham, 1 Cr. C. C. 14; Talcott *v.* Delaware Ins. Com., 2 Wash. C. C. 449; James *v.* Stookey, 1 Wash. C. C. 330; Bennett *v.* Bennett, Dist. Crt. Oregon, 1867.)

The courts of the United States take judicial notice of the public statutes of the several States. (Merchants Exch. Bank *v.* McGraw, 59 Fed. Rep. 972; Owings *v.* Hull, 9 Peters, 625; Bank *v.* Francklyn, 120 U. S. 747; Lamar *v.* Micou, 114 U. S. 857; Gormley *v.* Bunyan, 138 U. S. 453.)

The testimony of a credible witness, whether a lawyer or a layman, with reasonable means of information, to the effect that a volume containing what purports to be a statute of a foreign country is commonly received in the business and courts of such country as such, is competent and sufficient proof of the existence of such statute. (Dundee Mortgage and Investment Co. *v.* Cooper, 26 Fed. Rep. 665.)

All records and exemplifications of books which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal of the State, or Territory, or country, that the said attesta-

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Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in

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tion is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken. (Sec. 906, R. S.)

The edition of the laws of the United States published by Little & Brown shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof. (Sec. 908, R. S.)

Every judge advocate of a court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such military courts shall be ordered to sit may lawfully issue. (Sec. 1202, R. S.)

The authority to issue process to compel civilian witnesses to appear and testify is vested, by section 1202, Revised Statutes, in "every judge advocate of a court-martial." The present statute, however (unlike the original form), does not extend the authority to recorders of courts of inquiry. Further, the authority, being vested exclusively and independently in the judge advocate, can not be exercised by the court. The attachment is thus not a writ or process of the court but simply a compulsory instrumentality placed at the disposition of the judge advocate as the prosecuting official representing the United States. (Dig. Op. J. A. G., par. 2478, Ed. 1901.)

A judge advocate can not properly direct an attachment to a United States marshal or deputy marshal or other civil official. Some military officer or person should be designated by him or detailed for the purpose by superior authority. In executing the attachment the needful force may be employed, but no more. (Id., par. 2481.)

The judge advocate is authorized only to initiate the process of attachment. The statute does not specify by whom it shall be executed, and the judge advocate is not authorized to command any officer or person to serve it, nor has the court any such power. (Id., par. 1551.)

The subject of the extent of the authority of the courts to compel telegraph companies to produce original private telegrams for use in evidence is most fully treated in an essay by Henry Hitchcock, Esq., on the "Inviolability of telegrams," published in the Southern Law Review for October, 1879.

Every person not belonging to the Army of the United States who, being duly subpœnaed to appear as a witness before a general court-martial of the Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by the general court-martial, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such general court-martial is held, and that the fees of such witness, and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Pay Department of the Army out of the appropriation for compensation of witnesses: *Provided:* That no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him. (Act of Mar. 2, 1901, 31 Stat. 950.)

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the following form: "You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

ART. 20. *Continuances.*—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.[1]

ART. 21. *Refusal to plead.*—When the accused, arraigned before a court-martial, from obstinacy and deliberate design stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if he had pleaded not guilty.[2]

ART. 22. *Process to obtain witnesses.*—Every judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States having criminal jurisdiction may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions.

ART. 23. *Refusal to appear or testify.*—Every person not subject to military law who, being duly subpœnaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the Territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five

[1] See Manual for Courts-Martial, 63; also Dig. Op. J. A. G. 165, XCIII, A 1, 2.

It is not the practice of courts-martial to admit counter affidavits from the opposite party as to what the absent witness would testify. And as to the civil practice, see Williams *v.* State, 6 Nebr., 334.

Compare People *v.* Thompson, 4 Cal. 238; Parker *v.* State, 55 Miss. 414.

A military accused can not be charged with laches in not procuring the attendance at his trial of a witness who is prevented from being present by superior military authority. Thus in a case in G. O. 63, Department of Dakota, 1872, an accused soldier was held entitled to a continuance till the return of material witnesses then absent on an Indian expedition.

[2] See Dig. Op. J. A. G. 516 E 2 to 518 E 5 b as to pleas in general.

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hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses.

ART. 24. *Compulsory self-incrimination prohibited.*—No witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

ART. 25. *Depositions—When admissible.*—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: *Provided*, That testimony by deposition may be adduced for the defense in capital cases.[1]

ART. 26. *Depositions—Before whom taken.*—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

ART. 27. *Courts of inquiry—Records of, when admissible.*—The record of the proceedings of a court of inquiry may be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

ART. 28. *Resignation without acceptance does not release officer.*—Any officer who, having tendered his resignation and prior to due

[1] See Dig. Op. J. A. G., 163 XCI A to 165 XCIII; also Manual for Courts-Martial.

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notice of the acceptance of the same quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

ART. 29. *Enlistment without discharge.*—Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and, where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein.[1]

ART. 30. *Closed sessions.*—Whenever a general or special court-martial shall sit in closed session, the judge advocate and the assistant judge advocate, if any, shall withdraw; and when their legal advice or their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel if there be any.

ART. 31. *Order of voting.*—Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank.

ART. 32. *Contempts.*—A court-martial may punish at discretion, subject to the limitations contained in article fourteen, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.[2]

ART. 33. *Records—General courts-martial.*—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the judge advocate; but in

[1] *Held*, That an enlisted marine who abandoned the Marine Corps without a discharge and enlisted in the Army could not be "reputed a deserter" according to the terms of this article; but *advised* that he be turned over to the commandant of that corps for the proper disposition and action. (Dig. Op. J. A. G. par. 74. Ed. 1901.)

Where a soldier enlisted in a certain regiment, after being officially notified that he was duly discharged from a previous enlistment, but without having received the written certificate and evidence of his discharge, which, by mistake or accident, had not been delivered to him as required by article 4, *held*, that he could not properly be "reputed" or charged as a deserter. (Id., par. 75.)

An enlistment in violation of this article is not void but voidable at the option of the United States only. Until so avoided service under it is valid service. On a trial for an offense committed during such enlistment, a plea by the accused, in bar of trial, that this enlistment, being fraudulent on his part, is void, should not be sustained. (Id., par. 76.)

[2] Contempts, broadly considered, are of two kinds—direct and constructive. Contempts committed in the presence of the court, sitting judicially, or so near as to interfere with the orderly course of procedure, are direct contempts. Contempts committed, not in presence of the court, but which tend, by their operation, to interrupt, obstruct, embarrass, or prevent the due and orderly administration of justice, are constructive contempts. (Indianapolis Water Co. *v.* The American Strawboard Co., 75 Fed. Rep. 972.) Over the former, direct contempts courts-martial are endowed with jurisdiction by the terms of the Thirty-second Article of War; in respect to the latter, constructive contempts, when committed by persons not subject to military jurisdiction, courts-martial are without jurisdiction. (See Dig. Op. J. A. G. 162, 163, LXXXVI.)

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case the record can not be authenticated by the judge advocate, by reason of his death, disability, or absence, it shall be signed by the president and an assistant judge advocate, if any; and if there be no assistant judge advocate, or in case of his death, disability, or absence, then by the president and one other member of the court.

ART. 34. *Records—Special and summary courts-martial.*—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

ART. 35. *Disposition of records—General courts-martial.*—The judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been finally acted upon, be transmitted to the Judge Advocate General of the Army.

ART. 36. *Disposition of records—Special and summary courts-martial.*—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of special and summary courts-martial may be destroyed.

ART. 37. *Irregularities—Effect of.*—The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided*, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: *Provided further*, That the omission of the words "hard labor" in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments.

ART. 38. *President may prescribe rules.*—The President may by regulations, which he may modify from time to time, prescribe the

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procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals: *Provided*, That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further*, That all rules made in pursuance of this article shall be laid before the Congress annually.

E. LIMITATIONS UPON PROSECUTIONS.

ART. 39. *As to time.*—Except for desertion committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment by court-martial shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: *And provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.[1]

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[1] No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service. (Act of Apr. 11, 1890, 26 Stat. 54.)

Courts of inquiry may be convened without regard to the period which has elapsed since the dates of the act or acts to be investigated. Nor does the limitation apply to the hearing of complaints under article 121. (Dig. Op. J. A. G., par. 318, ed. 1901; VI Op. Att. Gen. 239.)

In view of this article, it is the duty of the Government to prosecute an offender within a reasonable time after the commission of the offense. (Dig. Op. J. A. G., par. 319, edition 1901.)

It has been held, under the original article, that an officer or soldier could not be legally arrested, with a view to trial, where more than two years (in which he was amenable to justice) had elapsed since his offense. (Id., 123, par. 7.)

A court-martial, in case of an offense other than desertion, sustained a plea of the statute of limitations in bar of trial for the reason that the judge advocate could produce no evidence to show that the accused was not within the territorial jurisdiction of the United States during his absence. *Held* that such showing was not necessary, and that it was sufficient that the absence should be any unauthorized absence from the military service whereby the absentee evades and for the time escapes trial. This construction of the term "absented himself" in the article corresponds to that placed on the words "fleeing from justice," as used in the statutes of the United States to designate those whom the statutes of limitations for the prosecution of crimes do not protect. (Id., par. 322.)

See Dig. Op. J. A. G., 171, CIII A to 174 CIV. A. 1: also Military Law and Precedents, Winthrop, 379–387. Military Law, Davis, 535–536.

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ART. 40. *As to number.*—No person shall be tried a second time for the same offense.[1]

F. PUNISHMENTS.

ART. 41. *Certain kinds prohibited.*—Punishment by flogging, or by branding, marking, or tattooing on the body is prohibited.

ART. 42. *Places of confinement—When lawful.*—Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall under the sentence of a court-martial be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature by some statute of the United States, or at the common law as the same exists in the District of Columbia, or by way of commutation of a death sentence, and unless, also, the period of confinement authorized and adjudged by such court-martial is one year or more: *Provided*, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: *Provided further*, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: *Provided further*, That persons sentenced to dishonorable discharge and to confinement not in a penitentiary, shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of War or the reviewing authority may direct, but not in a penitentiary.[2]

ART. 43. *Death sentence—When lawful.*—No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death,

[1] See Dig. Op. J. A. G., 167 CII A to 171 CII I. For syllabus of the Grafton case, 206 U. S., 333, see id., 170, note 2.

[2] Penitentiary confinement can not be legalized as a punishment for purely military offenses by designating a penitentiary as a "military prison" and ordering the confinement there of soldiers sentenced to imprisonment on conviction of such offenses. (Dig. Op. J. A. G., par. 290; ed. 1901.)

Where a court-martial specifically sentences an accused to confinement in a "military prison," he can not legally be committed to a penitentiary, although such form of imprisonment would be authorized by the character of his offense. But where a sentence of confinement is expressed in general terms, as where it directs that the accused shall be confined "in such place or prison as the proper authority may order," or in terms to such effect, *held* that the same may, under this article, legally be executed by the commitment of the party to a penitentiary, to be designated by the reviewing officer or Secretary of War, provided, of course, the offense is of such a nature as to warrant this form of punishment. (Id., par. 295.)

A conviction of a larceny of property of such slight value as not to authorize this punishment under the local law would not warrant a sentence of confinement in a penitentiary. In a case of larceny the court should inform itself as to whether the value of the property stolen be not too small to permit of

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except by the concurrence of two-thirds of the members of said court-martial and for an offense in these articles expressly made punishable by death.[1] All other convictions and sentences, whether by general or special court-martial, may be determined by a majority of the members present.

ART. 44. *Cowardice; fraud—Accessory penalty.*—When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from

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penitentiary confinement for the offense under the law of the State, etc. (Id., 115, par. 13.)

A punishment of confinement in a penitentiary, where legal, may be mitigated to confinement in a military prison or at a military post. (Id., par. 299.)

A military prisoner duly sentenced or committed to a penitentiary becomes subject to the government and rules of the institution. (Id., par. 293.)

See Dig. Op., J. A. G. 165, XCVII, A to 166, C. A.; 415 XC, 1, 2; 563 a (17); 565 g, g 1; 569 H 3; 583 h (1); also pars. 966–967, A. R. 1913.

For the method of dealing with prisoners see G. O. 56, War Dept., Sept. 17, 1913, paragraph 15 of which reads as follows:

"It is the policy of the War Department to separate, so far as practicable, general prisoners convicted of offenses punishable by penitentiary confinement from general prisoners convicted of purely military offenses or of misdemeanors in connection with purely military offenses. In furtherance of this policy reviewing authorities will designate a penitentiary as the place of confinement of general prisoners sentenced to be confined for more than one year upon conviction of offenses punishable by confinement in a penitentiary under some statute of the United States or under some statute or other law in force in the locality in which the offense was committed (see 97th (42d) Article of War), except in individual cases in which the proved circumstances show that the holding of the prisoners so convicted in prison associations with misdemeanants and military offenders will not be to the detriment of the latter. For general prisoners to be confined in penitentiaries under the foregoing rule, reviewing authorities in the United States or Hawaii will designate the United States Penitentiary at Leavenworth, Kans., as the place of confinement, except that such prisoners as are residents of Hawaii, Porto Rico, and the Canal Zone may be confined in local penitentiaries; and reviewing authorities in the Philippine Islands will designate the penitentiary at Bilibid, Manila, P. I., as the place of confinement."

[1] Though it has sometimes been viewed otherwise, it is deemed quite clear upon the terms of the present article that it is not necessary to the legality of a death sentence which was not mandatory that two-thirds of the court should have concurred in the finding as well as the sentence. Further, in the absence of any requirement to that effect in the article, it is not deemed essential to the validity of the sentence that the record should state the fact that two-thirds of the court concurred therein. The practice, however, has been to add such a statement. (Dig. Op. J. A. G. 112, par 1, ed. 1901.)

Where a death sentence imposed by a court-martial has been directed by the proper authority to be executed on a particular day, and this day, owing to some exigency of the service, has gone by without the sentence being executed, it is competent for the same authority, or his proper superior, to name another day for the purpose, the time of its execution being an immaterial element of this punishment. (Id. par 288; see also Dig. Op. J. A. G. 165, XCVI, A, B.)

In the case of an enlisted man, tried by a general court-martial for a violation of the sixty-fourth Article of War, the record failed to show affirmatively that two-thirds of the members concurred in the imposition of the death sentence; the sentence was therefore disapproved by the President. G. O. 172, A. G. O. 1862. See also G. O. 18, A. G. O. 1863.

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which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.[1]

ART. 45. *Maximum limits.*—Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not, in time of peace, exceed such limit or limits as the President may from time to time prescribe.[2]

G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY.

ART. 46. *Approval and execution of sentence.*—No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being.[3]

ART. 47. *Powers incident to power to approve.*—The power to approve the sentence of a court-martial shall be held to include:

(a) The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and

(b) The power to approve or disapprove the whole or any part of the sentence.

ART. 48. *Confirmation—When required.*—In addition to the approval required by article forty-six, confirmation by the President[4] is required in the following cases before the sentence of a court-martial is carried into execution, namely:

(a) Any sentence respecting a general officer;

(b) Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer

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[1] Though the injunction of the article as to the direction to be added in the sentence should of course regularly be complied with, a failure so to comply will not affect the validity of the punishment of dismissal adjudged by the sentence. (See IV Opins. Att. Gen. 124; XII id. 424–428; XIV id. 527; XV id. 658.) A contrary view expressed by the Court of Claims, in its earlier period, in a series of cases (see Smith *v.* United States, 2 Ct. Cls. 206; Winters *v.* United States, 3 id. 136; Barnes *v.* United States, 4 id. 216; Montgomery *v.* United States, 5 id. 93) was finally practically abandoned in McElrath *v.* United States, 12 id. 201. The declaration of the article that after the publication "it shall be scandalous for an officer to associate with" the dismissed officer, though it has in a few cases (see VIII Opins. Att. Gen. 235; XII id. 421; XIII id. 5; McElrath *v.* United States, 12 Ct. Cls. 202) been incorporated in the sentence, is not intended to be, and should not be, so expressed by the court. (Dig. Op. J. A. G. par. 302, ed. 1901.)

See also Dig. Op. J. A. G. 166, 167, C. A. B.

[2] Under the authority conferred by this article executive orders have been issued prescribing limits of punishment for offenses to which specific penalties are not attached in the Articles of War.

[3] See Dig. Op. J. A. G., 174, CIV A 1 to 175 CVI A.

[4] For instances in which the proceedings in important cases were disapproved by the President on account of their not having been reviewed by the officer ordering the court, see G. O. 55, A. G. O. 1863; id., 101, 1863; id., 168, 1863, and id., 180, 1863.

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below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division;

(c) Any sentence extending to the suspension or dismissal of a cadet; and

(d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division.

When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary.

ART. 49. *Powers incident to power to confirm.*—The power to confirm the sentence of a court-martial shall be held to include:

(a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt; and

(b) The power to confirm or disapprove the whole or any part of the sentence.

ART. 50. *Mitigation or remission of sentences.*—The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence, but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial.[1]

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[1] See Dig. Op. J. A. G., 176 CXII A 1 to 178.

Section 5 of the act of July 27, 1892 (27 Stat. 281), provides "that commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same." (See also note to par. 2, "The pardoning power.")

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ART. 51. *Suspension of sentences of dismissal or death.*—The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President.[1]

ART. 52. *Suspension of sentence of dishonorable discharge.*—The authority competent to order the execution of a sentence, including dishonorable discharge, may suspend the execution of the dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the soldier is held or by the Secretary of War.

ART. 53. *Suspension of sentences of forfeiture or confinement.*—The authority competent to order the execution of a sentence adjudged by a court-martial may, if the sentence involve neither dismissal nor dishonorable discharge, suspend the execution of the sentence in so far as it relates to the forfeiture of pay or to confinement, or to both; and the person under sentence may be restored to duty during the suspension of confinement. At any time within one year after the date of the order of suspension such order may, for sufficient cause, be vacated and the execution of the sentence directed by the military authority competent to order the execution of like sentences in the command, exclusive of penitentiaries and the United States Disciplinary Barracks, to which the person under sentence belongs or in which he may be found; but if the order of suspension be not vacated within one year after the date thereof the suspended sentence shall be held to have been remitted.

III. PUNITIVE ARTICLES.[2]

A. ENLISTMENT; MUSTER; RETURNS.

ART. 54. *Fraudulent enlistment.*—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct.[3]

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[1] See Dig. Op. J. A. G., 176 CXI A.

[2] For a full discussion of these articles, see M. C. M., 1917.

[3] Whether enlistments are void or voidable, see Dig. Op. J. A. G., 607 f 5 and f 6, and notes thereunder.

As to fraudulent enlistment, see Dig. Op. J. A. G., 605–610 I A 9 a–I A 9 o, and notes thereunder.

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ART. 55. *Officer making unlawful enlistment.*—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

ART. 56. *Muster rolls—False muster.*—At every muster of a regiment, troop, battery, or company the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent noncommissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit. Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.[1]

ART. 57. *False returns—Omission to render returns.*—Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunitions, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who,

[1] *Held* that the mere signing by an officer of a voucher for his pay before the last day of the month for which it was due did not constitute an offense of the class intended to be made punishable by this article. (Dig. Op. J. A. Gen. par. 4, Ed. 1901.)

For a case in which an officer was convicted of false muster (although the offense was erroneously charged under the sixty-first article) see G. O., 183, A. G. O. 1863.

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through neglect or design, omits to render such return shall be punished as a court-martial may direct.[1]

B. DESERTION—ABSENCE WITHOUT LEAVE.

ART. 58. *Desertion.*—Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.[2]

ART. 59. *Advising or aiding another to desert.*—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death, or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

ART. 60. *Entertaining a deserter.*—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct.

ART. 61. *Absence without leave.*—Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct.[3]

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[1] This article refers only to returns made by certain commanders as such. It is only as commander of a regiment, company, or garrison that an officer can be made amenable to a charge under the article. An officer not exercising one of these commands is not within its terms. (Dig. Opin. J. A. Gen. par. 1. Ed. 1901.)

In 1872 an officer of the line of the Army, on duty as post quartermaster at Paducah, Ky., was tried for a violation of this article in making false returns of the property for which he was responsible, and was convicted. As the article applies exclusively to officers exercising the specific commands named in the statute, and as the officer in this case exercised no one of the commands so specified, the findings under this article were disapproved by the reviewing authority. (Gen. Court-Martial Orders, No. 12, War Dept., 1872. See also, G. C. M. O., No. 19, War Dept., 1872.)

[2] See Dig. Op. J. A. G. 129–131, and chapter entitled "Desertion."

For the law authorizing rewards to civil officers or citizens for arrest of deserters see par. 1056–1058, ante; also Dig. Op. J. A. G. 402, note 1.

For the law as to forfeiture of rights of a citizen see par. 1050, 1052, ante.

[3] As to various decisions respecting a soldier's absence without leave, see Dig. Op. J. A. G. 15 and 16; and sec. 1265, R. S., that an officer absent without leave shall forfeit all pay and allowances unless the absence be excused as unavoidable. The deduction of pay does not affect the right to punish by court-martial. As to the commission of two offenses by one absence, see Dig. Op. J. A. G. 126 XXXII B, 127 XXXII C.

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C. DISRESPECT—INSUBORDINATION—MUTINY.

ART. 62. *Disrespect toward the President, Vice President, Congress, Secretary of War, governors, legislatures.*—Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct.

ART. 63. *Disrespect toward superior officer.*—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct.[1]

ART. 64. *Assaulting or willfully disobeying superior officer.*—Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.[2]

ART. 65. *Insubordinate conduct toward noncommissioned officer.*—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a noncommissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a noncommissioned officer while in

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[1] The disrespect here indicated may consist in acts or words (G. O. 44, Department of Dakota, 1872. And see G. C. M. O. 28, War Department, 1875; G. O. 47, Department of the Platte, 1870); and the particular acts or words relied upon as constituting the offense should properly be set forth in substance in the specification.

That the use of abusive language toward a commanding officer may constitute an offense under article 95, see Dig. Op. J. A. G. 488–17a.

[2] As to knowledge that person assaulted is superior in rank, was in the execution of his office, that the command was lawful, and the responsibility of deciding upon the lawfulness of the command, see Dig. Op. J. A. G. 539.

As to failure to perform a routine duty, see Id. 121–122.

As to power to execute sentence of death, see Id. 122 E 2.

The first duty of a soldier is obedience, and without this there can be neither discipline nor efficiency in an army. (McCall *v.* McDowell, 15 Fed. Cas. 1235.)

To insure efficiency an army must be, to a certain extent, a despotism. Each officer * * * is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army waives, in some particulars, his rights as a civilian, surrenders his personal liberty during the term of his enlistment, and consents to come and go at the will of his superior officers. He agrees to become amenable to the military courts, to be disciplined for offenses unknown to the civil law, to relinquish his right of trial by jury, and to receive punishments which, to the civilian, seem out of all proportion to the magnitude of the offense. (U. S. *v.* Clarke, 3 Fed. Rep. 713, Brown, J.)

An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the

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the execution of his office, shall be punished as a court-martial may direct.

ART. 66. *Mutiny or sedition.*—Any person subject to military law who attempts to create, or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command, shall suffer death or such other punishment as a court-martial may direct.

ART. 67. *Failure to suppress mutiny or sedition.*—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other punishment as a court-martial may direct.

ART. 68. *Quarrels; frays; disorders.*—All officers and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer or draws a weapon upon or otherwise threatens or does violence to him shall be punished as a court-martial may direct.[1]

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officer or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other. (In re Grimley, 137 U. S. 153.)

The fact that any stated duty is enjoined in regulations or orders does not in itself render a nonperformance of such duty a disobedience of orders in violation of the sixty-fourth article; but to support this charge it is essential that there should be shown an intentional disregard of authority as is evinced by a willful refusal or omission to comply with the specific command of a superior officer. (G. C. M. O. 26, War Dept. 1872.)

An order given by a military officer to his private should be obeyed by the private, and will be his full protection in a criminal prosecution, unless the illegality of the order is so clearly shown on its face that a man of ordinary sense and understanding would know when he heard it read or given that the order was illegal. (In re Fair et al., 100 Fed. Rep. 149; Riggs *v.* State, 3 Cold. 85 (Tenn.); McCall *v.* McDowell, Fed. Cases, No. 8673; U. S. *v.* Clark, 31 Fed. Rep. 710; in re Grimley, 137 U. S. 147; in re Lewis, 83 Fed. Rep. 159; in re Waite, 81 Fed. Rep. 359.)

Whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves than civilians for actual wrongs, committed in time of peace, under orders emanating from a source which is itself without authority in the premises. Hence a military officer seizing liquors supposed to be in Indian country, when they are not, is liable to an action as a trespasser. (Bates *v.* Clark, 95 U. S. 204.)

[1] As to the common-law authority for a bystander to arrest an affrayer, see Dig. Op. J. A. G. 124, footnote 1.

Force used.—The force to be used in quelling an affray or maintaining the peace is that only which is necessary to secure or subdue the offenders. It does not consist of repeated blows, inflicted by way of punishment for past

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D. ARREST; CONFINEMENT.

ART. 69. *Arrest or confinement of accused persons.*—An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest.[1] Any other person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; and when charged with a minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer who breaks his arrest or who escapes from confinement before he is set at liberty by proper authority shall be dismissed from the service or suffer such other punishment as a court-martial may direct,[2] and any other person subject to military law who escapes from confinement or who breaks his arrest before he is set at liberty by proper authority shall be punished as a court-martial may direct.

ART. 70. *Investigation of and action upon charges.*—No person put in arrest shall be continued in confinement more than eight days,

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deeds, but must be such force as is preventive in character, and must not exceed the strict necessity of the case requiring such acts of prevention. No officer has authority to inflict punishment for past offenses of any kind. This authority is possessed by courts only. (G. O., No. 4, A. G. O. 1843; see also par. 7 of G. O. 53, A. G. O. of 1842.)

In suppressing disorders, etc., means should be proportioned to ends to be gained; violent measures, clearly unnecessary, will not be justified. (U. S. *v.* Carr, 1 Woods, 480.)

For a case in which it became incumbent upon a junior officer to "part and quell" an affray, and, in the performance of his duty under this article, to give orders to a military superior who was a participant in the disturbance, see General Court-Martial Orders, No. 20, War Department, of 1880.

[1] Soldiers held in military arrest, while they may be subjected to such restraint as may be necessary to prevent their escaping or committing violence, can not legally be subjected to any punishment. The imposition of punishment upon soldiers while thus detained has been on several occasions emphatically denounced by department commanders. (See, for example, the remarks of such commanders in G. O. 23, Department of the East, 1863; G. O. 26, Department of California, 1866; G. O. 23, Department of the Lakes, 1870; G. O. 106, Department of Dakota, 1871. And compare remarks of Justice Story in Steere *v.* Field, 2 Mason, 516. Dig. Op. J. A. G., par. 175, Ed. 1901. See also Dig. Op. J. A. G. 152, LXVI.)

[2] An offense in violation of this article is only committed when an officer confined in "close arrest" to his quarters leaves the same without authority. A breach of a mere formal arrest or of any arrest not accompanied by confinement to quarters would be an offense not within this article, but under article 96. (Dig. Op. J. A. G. par. 170, Ed. 1901.)

Simply disobeying an order to proceed and report in arrest to a certain commander *held* not an offense chargeable under this article. Id., par. 171.

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or until such time as a court-martial can be assembled.[1] When any person is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested person be not brought to trial, as herein required, the arrest shall cease. But persons released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest: *Provided*, That in time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

ART. 71. *Refusal to receive and keep prisoners.*—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct.[2]

ART. 72. *Report of prisoners received.*—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report he shall be punished as a court-martial may direct.

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[1] Detaining soldiers in arrest for long and unreasonable periods, when it is practicable to bring them to trial, is arbitrary and oppressive, and in contravention both of the letter and spirit of this article. Whether the delay in any case is to be regarded as so far unreasonable as properly to subject the commander responsible therefor to military charges or a civil action must depend upon the circumstances of the situation and the exigencies of the service at the time. (Compare Blake's case, 2 Maule & Sel., 428; Bailey *v.* Warden, 4 id., 400. Dig. Op. J. A. G., par. 177, Ed. 1901.)

[2] In the English case of Wolton *v.* Gavin (16 Ad. and E. 70) it was decided that "a commanding officer receiving a soldier charged with desertion by a noncommissioned officer, who delivered a written signed charge of the same, is justified under this article in detaining such soldier. He is bound to receive the prisoner under the article of war and he is not liable to an action for so doing. It makes no difference whether the crime be civil or military. The fact that a man is prima facie a soldier, and enlisted, is sufficient to bring him under the article of war. The duty of receiving arises eo instanti—as soon as he is presented."

If such imprisonment proves illegal, the committing officer becomes responsible, the duty of the officer commanding the guard being ministerial merely. See, in this connection, the case of McCall *v.* McDowell, 1 Abbott, 212.

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ART. 73. *Releasing prisoner without proper authority.*—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 74. *Delivery of offenders to civil authorities.*—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused persons to the civil authorities or to aid the officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.[1]

When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

E. WAR OFFENSES.

ART. 75. *Misbehavior before the enemy.*—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters shall suffer death or such other punishment as a court-martial may direct.

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[1] See Dig. Op. J. A. G., 134 to 138.

This article does not apply to the service by a sheriff on an officer or soldier of a subpœna to appear as a witness before a civil court. In such a case, indeed, the civil official should, as a matter of comity, apply first to the post commander, whether or not the post be within the exclusive jurisdiction of the United States. It will then be for the commander, in comity, to facilitate the service and to issue the necessary permit or order to enable and cause the officer or soldier to attend the court. (Dig. Op. J. A. G., par. 104. Ed. 1901.)

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ART. 76. *Subordinates compelling commander to surrender.*—If any commander of any garrison, fort, post, camp, guard, or other command is compelled, by the officers or soldiers under his command, to give it up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death or such other punishment as a court-martial may direct.

ART. 77. *Improper use of countersign.*—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct.

ART. 78. *Forcing a safeguard.*—Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

ART. 79. *Captured property to be secured for public service.*—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct.[1]

ART. 80. *Dealing in captured or abandoned property.*—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody

[1] The title to property captured from an enemy in war vests, at the instant of capture, in the captor's Government, which may make such disposition of it as it may deem expedient. The policy and practice of the United States, as to the property captured on land, has been to retain it for governmental uses or to sell it and convert the proceeds to its own use. (See the "Captured and abandoned property act" (act of Mar. 12, 1863), in the chapter entitled "Employment of Military Force," etc.)

This provision is in accordance with the principle of the law of nations and of war, that enemy's property duly captured in war becomes the property of the government or power by whose forces it is taken, and not that of the individuals who take it. (U. S. *v.* Klein, 13 Wallace 136; Decatur *v.* U. S., Devereux 110; White *v.* Red Chief, 1 Woods 40; Branner *v.* Felkner, 1 Heisk. 232; Worthy *v.* Kinamon, 44 Ga. 299; Huff *v.* Odom, 49 id. 395; XIII Opin. Att. Gen. 105; Hough (Practice) 329, 330; G. O. 54, Headquarters of Army, Mexico, 1848; G. O. 21, War Department, 1848; G. O. 64, 107, id. 1862. And see also Lamar *v.* Browne, 2 Otto 195, in regard to the same principle as illustrated by the captured and abandoned property act of Mar. 12, 1863.) "Private persons can not capture for their own benefit." (Worthy *v.* Kinamon, *supra.*) Military stores taken from the enemy, becoming, upon capture, the property of the United States, Congress, which by the Constitution (Art. I, sec. 8, par. 11; Art. IV, sec. 3, par. 2) is exclusively vested with the power to dispose of the public property, as well as to make rules concerning captures on land and water, can alone authorize the sale or transfer of the same. An officer or soldier of the Army who assumes of his own authority to appropriate such articles renders himself chargeable with a military offense. (See, in this connection, sec. 5313, Rev. Stat.) (Id., par. 3.)

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or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties.

ART. 81. *Relieving, corresponding with, or aiding the enemy.*—Whosoever relieves the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial or military commission may direct.[1]

ART. 82. *Spies.*—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death.

F. MISCELLANEOUS CRIMES AND OFFENSES.

ART. 83. *Military property—Willful or negligent loss, damage, or wrongful disposition of.*—Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct.

ART. 84. *Waste or unlawful disposition of military property issued to soldiers.*—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct.[2]

ART. 85. *Drunk on duty.*—Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to mili-

[1] See Dig. Op. J. A. G. 128, XLV, A. B. C. C1. For the definition of treason see Constitution, Art. III, sec. 3. See also secs. 1–8, act of Mar. 4, 1909, Criminal Code (35 Stat. 1088–1089). For a definition of war rebels and war traitors see G. O. 100, A. G. O., 1863. That pillage is forbidden by the laws of war see Chap. XI, F. S. R.

[2] This article is quite independent of the regulations contained in article 60, Army Regulations, relating to surveys of property. The latter pass upon questions of pecuniary responsibility for the loss, etc., of public property. The court-martial, under this article, simply imposes punishment. (Dig. Op. J. A. G. 120, XVII C.)

That the clothing issued to a soldier is public property, see Dig. Op. J. A. G. 863 II A 3 a (4) (d), and section 35 Criminal Code (35 Stat. 1095). For a definition of accouterments, see Dig. Op. J. A. G. 1084.

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tary law, except an officer, who is found drunk on duty shall be punished as a court-martial may direct.[1]

ART. 86. *Misbehavior of sentinel.*—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct.[2]

ART. 87. *Personal interest in sale of provisions.*—Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessaries of life brought into such garrison, fort, barracks, camp, or other place for the use of the troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

ART. 88. *Intimidation of persons bringing provisions.*—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessaries to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct.

ART. 89. *Good order to be maintained and wrongs redressed.*—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot shall be punished as a court-martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article one hundred and five, shall be dismissed from the service, or otherwise punished, as a court-martial may direct.[3]

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[1] See Dig. Op. J. A. G. 127 A–C 1; 141 B 5–6; 148 C 13–14; 149 D; 488, 18 A; 503 D 5; 511 8 B; 530 A 8–9; 540, 9 a; 543, 2 d; 607 f 5.

That the duty in this case means military duty, see Military Law and Precedents, Winthrop, 949–950. We are of the opinion that officers of the Army are in the eye of the law on military duty, although employed as such officers under statute of the United States in the public service on duties not in themselves pertaining to the Army. Carter *v.* McClaughry, 183 U. S. 399.

[2] See Dig. J. A. G. 128, XXXIX A; 540, 10 a. The general guide in all matters relating to guard duty is the Manual of Guard Duty. See par. 441, A. R. 1913.

[3] See Dig. Op. J. A. G. 132–133.

The pay of the offender or offenders can be resorted to only for the purpose of the "reparation." A military commander can have no authority to add a further amount of stoppage by way of punishment. (Dig. Op. J. A. G. par. 82, edition of 1901.)

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ART. 90. *Provoking speeches or gestures.*—No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct.

ART. 91. *Duelling.*—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who having knowledge of a challenge sent or about to be sent fails to report the fact promptly to the proper authority shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.[1]

ART. 92. *Murder—Rape.*—Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.[2]

ART. 93. *Various crimes.*—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury, assault with intent to commit any felony, or assault with intent to do bodily harm, shall be punished as a court-martial may direct.

ART. 94. *Frauds against the Government.*—Any person subject to military law who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

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[1] On the general subject of challenges, and the question what constitutes a challenge, see the principal cases of the sending of challenges in our service, as published in G. O. 64, A. G. O. 1827; G. O. 39, 41, id. 1835; G. O. 2, War Department, 1858; G. O. 330, id. 1863; G. O. 11, Army of the Potomac, 1861; G. O. 46, Department of the Gulf, 1863; G. O. 228, Department of the Missouri, 1864; G. O. 130, id. 1872; G. O. 33, Department and Army of the Tennessee, 1864. And compare Commonwealth *v.* Levy, 2 Wheeler, Cr. C. 245; Commonwealth *v.* Tibbs, 1 Dana, 524; Commonwealth *v.* Hart, 6 J. J. March, 119; State *v.* Taylor, 1 So. Ca. 108; State *v.* Strickland, 2 Nott & McCord, 181; Ivey *v.* State, 12 Ala. 277; Aulger *v.* People, 34 Ill. 486; 2 Bishop, Cr. L. sec. 314; Samuel, 384–387; State *v.* Gibbons, 1 South, 51.

[2] See Dig. Op. J. A. G. 133–134, and 488, 15 a.

Held (November, 1865) that military courts were still empowered to exercise the jurisdiction conferred by this article, the status belli not having yet been declared to be terminated, either by the Executive or Congress. A court-martial, of course, could have no authority whatever to decide whether the war was ended. (Id. par. 89, edition 1901.)

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Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statements; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willingly misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any

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of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.[1]

ART. 95. *Conduct unbecoming an officer and gentleman.*—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.[2]

ART. 96. *General article.*—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.[3]

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[1] See Dig. Op. J. A. G. 138 LX to 140 LXI; 488, 16b; 144, Note 1.

A charge of embezzlement under this article would not lie where the money or property embezzled was not public money, but belonged to the post, company, or exchange funds; such money not being public money within the scope of article 94. (G. C. M. O. 27, War Dept., 1872; see, also, G. C. M. O. 4, id., 1873.)

Under the grant of jurisdiction to a court-martial conferred by the Ninety-fourth Article of War, providing that any person in the military service who misappropriates any money of the United States, "furnished or intended for the military service thereof," shall be punished, etc., such a court has no power to convict an officer of the Army for misappropriating money appropriated by Congress for the improvement of rivers and harbors. (In re Carter, 97 Fed. Rep. 496.) Such a conviction, however, may be had where the misappropriation of such funds is charged as a violation of article 93.

When an officer who has been sentenced to forfeit all pay due, but whose sentence had not yet been approved or published, presented pay accounts to the paymaster for his pay and received the amount of the same, *held*, that he was not triable for the offense of presenting a fraudulent claim under this article. (Id., par. 108, ed. 1901.)

Repeated false statements of the accused relative to the public moneys for which he was accountable are competent evidence going to sustain a charge of embezzlement under this article. (Dig. Op. J. A. G., par. 120, ed. 1901.)

[2] See Dig. Op. J. A. G. 140 LXI A to 143 LXII A; 488, 17a.

According to the accepted principle of interpretation, by which articles of war enjoining a specific punishment or punishments are held to be in this particular both mandatory and exclusive, no sentence other than one of simple dismissal can legally be adjudged upon a conviction under this article. A sentence which adds to dismissal any other penalty or penalties, as disqualification for office, forfeiture of pay, imprisonment, etc., is valid and operative only as to the dismissal, and as to the rest should be formally disapproved as being unauthorized and of no effect. (Dig. Op. J. A. G., par. 142, ed. 1901. See Dig. Op. J. A. G., 489, D 19.)

The mere acceptance by an officer of compensation from private parties (civilians) whom, by permission of his superior, he assists in a private undertaking, though it may be an indelicate act, is not an offense under this article. Of the propriety of such conduct an officer must judge for himself. (Dig. Op. J. A. G., par. 144, ed. 1901.)

[3] See Dig. Op. J. A. G., 143 LXII A to 151 LXIII A; 488, 18 a to 489, 19.

Where an offense is specifically provided for in any of the Articles of War prior to the ninety-sixth, the grant of jurisdiction to a court-martial to try and punish such offense is conferred by the particular article which mentions it, and not by the general language of the ninety-sixth article, providing for the trial and punishment of offenses not capital, and all disorders, etc., though not mentioned in the preceding articles. (In re Carter, 97 Fed. Rep. 496.)

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IV. Courts of Inquiry.

Art. 97. *When and by whom ordered.*—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.[1]

Art. 98. *Composition.*—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

Art. 99. *Challenges.*—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available.

Art. 100. *Oath of members and recorder.*—The recorder of a court of inquiry shall administer to the members the following oath: "You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you, God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you, God."

In case of affirmation the closing sentence of adjuration will be omitted.

Art. 101. *Powers; procedure.*—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses

[1] A court of inquiry should not in general be ordered by an inferior—post or regimental—commander where the charges required to be investigated are not such as an inferior court-martial could legally take cognizance of. Courts of inquiry convened by such commanders are, however, of rare occurrence in our service. (Dig. Op. J. A. G., par. 367, ed. 1901.)

A court of inquiry has no power to punish as for a contempt. Such power of this nature as is conferred by article 32 is restricted in terms to courts-martial. Moreover, a court of inquiry, not being in a proper sense a *court*, can not exercise the strictly judicial function of punishing contempts. A loose observation of Hough (Authorities, 10), that "contempts before courts of inquiry are as much punishable as before courts-martial," has been carelessly repeated by several American writers. The recent English writer, Clode, correctly states the law (as to witnesses) in saying (Mil. and Mar. Law, 198) that a court of inquiry "has no power to punish them for contumacy or silence." The act of Mar. 2, 1901 (31 Stat., 950), providing for the punishment of civilian witnesses refusing to appear or testify, is limited by its terms to general courts-martial.

See Dig. Op. J. A. G., 178 CXV A to 179 CXXII A; 170 CII G; 586 XVIII B; also Military Law and Precedents, Winthrop, 795–822.

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as is given to courts-martial and the judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

ART. 102. *Opinion on merits of case.*—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

ART. 103. *Record of proceedings—How authenticated.*—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

V. MISCELLANEOUS PROVISIONS.

ART. 104. *Disciplinary powers of commanding officers.*—Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in deter-

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mining the measure of punishment to be adjudged in the event of a finding of guilty.

ART. 105. *Injuries to person or property—Redress of.*—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board.

ART. 106. *Arrest of deserters by civil officials.*—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

ART. 107. *Soldiers to make good time lost.*—Every soldier who in an existing or subsequent enlistment deserts the service of the United States or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

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ART. 108. *Soldiers—Separation from the service.*—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.[1]

[1] The one hundred and eighth article of war prescribes that "no enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present," etc. In the corresponding article (the eleventh) of the Articles of War of 1806 the language was:

"After a noncommissioned officer or soldier shall have been duly enlisted and sworn, he shall not be dismissed the service without a discharge in writing; and no discharge granted to him shall be sufficient which is not signed by a field officer of the regiment to which he belongs or commanding officer when no field officer of the regiment is present," etc.

The article of 1806 was almost word for word a repetition of article 2 of section 3 of the articles of 1776, as the latter was of article 2 of section 3 of the British articles of 1774, from which the American articles were copied. Among the offenses made punishable by the British mutiny act of 1774 is found a soldier's listing himself "in any other regiment, troop, or company, without a discharge produced, in writing, from the colonel, or, in his absence, the field officer commanding in chief the regiment, troop, or company in which he last served as a listed soldier—" which will be recognized as relating to the same subject with our present twenty-ninth article of war.

This provision of the mutiny act can be traced back to 1716, when it appeared in the following words: "Or being a soldier actually listed in any regiment shall list himself into any other regiment without a discharge from the first regiment." In 1717 it was: "Or being a soldier actually listed in any regiment shall list privately in another without discharge." The article of war at this time (1717) was as follows:

"No noncommissioned officer, or soldier, shall leave his troop or company and inlist himself in any other regiment, troop, or company without a discharge from the commanding officer of the regiment in which he last served under pain of being reputed a deserter, and suffering death for it, or such other punishment as a court-martial shall inflict.

"And in case any officer shall knowingly receive or entertain any such noncommission officer or soldier; upon proof made thereof before a general court-martial, he shall be cashiered.

"Nor shall any discharge granted to any noncommissioned officer or soldier be allowed of as sufficient unless signed by a field officer of the regiment whence such soldier was dismissed."

This appears to have been the first article of war which required a discharge in writing. (Clode Mil. & Mar. Law, 2d Ed. p. 260, n.) In the articles of war of William and Mary, of 1692, there was an article which read as follows:

"No commission officer, after enrollment and being mustered, shall be dismissed or cashiered without order from His Majesty, the general, or commander in chief for the time being, or a general court-martial. But the captains with the approbation of their colonels or of the governors of the garrison where they are, may discharge any noncommission officer or private soldier when they find cause, taking other noncommission officer or private soldier in their places; provided that such colonel or governor shall forthwith certify the same to the commissary general of the musters, that (by their approbation) such noncommission officers or soldiers were discharged, and others taken in their places respectively, and in quarters and garrisons where there are only single troops or companies the captains' certificates are forthwith to be sent

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ART. 109. *Oath of enlistment.*—At the time of his enlistment every soldier shall take the following oath or affirmation: "I, ———, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules

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and accepted by the commissary general, expressing the day of each noncommission officer's and soldier's discharge or death, and who hath been entertained in his place."

This article contained no requirement of a discharge in writing.

In a celebrated case—Grant *v.* Gould—decided in 1792, Lord Loughborough said: "A person in pay as a soldier is fixed with the character of a soldier, and if once he becomes subject to the military character he never can be released but by a regular discharge." By "regular discharge" it has been understood that Lord Loughborough meant discharge in writing. Accepting this as correct, there is an important fact to be taken into consideration in connection with Lord Loughborough's ruling, namely, that at that time, as well as in 1717, when what was probably the original article was adopted, enlistments were for life. Under Queen Anne a three years' term was general; under the special circumstances of 1745 men were enlisted for two years; and in 1759 and 1775 the term was three years, or till the end of the war. (Army Book of the British Empire, p. 17.) And again in 1793 enlistments were for a limited time. But in 1792, as well as in 1717, they were for life, and it was with reference to this fact that Lord Loughborough's frequently cited decision was rendered. It might be held that on account of this fact a peculiar meaning attached to the article of war which could not be given to it when enlistments were for limited terms. Clode says: "It must not be supposed that the 'discharge' is the only test of status. In was held so to be in Grant *v.* Gould, but then the enlistment being for life, the onus of proof rested on the enlisted soldier to prove his discharge." (Clode, p. 260.) In speaking of the "discharge" as a test of status he meant the discharge in writing or certificate of discharge.

The present law and practice in regard to this subject in Great Britain is thus explained in the "British Manual of Military Law," issued from the War Office:

"The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve; consequently the Sovereign has always had power to discharge the soldier. But a soldier can not be discharged except by order of the Sovereign or by statutory power, such as the sentence of a court martial, to which is added in the Army act an 'order of the competent military authority.'

"A soldier on his discharge is entitled to receive a certificate of discharge, so as to show that he is properly discharged and is not a deserter."

This clearly shows the difference between the act of discharge and the certificate of discharge, and may be accepted as a correct statement of the law, except, perhaps, when enlistments were for life. The history of the article does not, therefore, require the construction that the delivery of a certificate of discharge is necessary to a valid discharge and that a soldier can not get out of service without a written discharge. Nor will an application of the well-established rules of construction lead to such a conclusion. Whatever may have been the meaning of the article when the term of service was for life, it seems clear that when the enlistment is for a term of years only, and the soldier, therefore, has a legal right to his discharge on the expiration of the term, this right can not be set at naught by his forcible retention in the service. If this should be attempted, he would be protected by the (Federal) civil courts, who would not hesitate to release him from the military service on a writ of habeas corpus, without any regard to a military discharge.

But the military discharge in writing is prescribed as a regular procedure in terminating the service, and its issuance is, therefore, an act done in the performance of a public duty; and the most reasonable construction of the 4th Article of War is that it is a direction as to the manner of performing a public

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and Articles of War." This oath or affirmation may be taken before any officer.[1]

ART. 110. *Certain articles to be read and explained.*—Articles one, two, and twenty-nine, fifty-four to ninety-six, inclusive, and one hundred and four to one hundred and nine, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States.

ART. 111. *Copy of record of trial.*—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial.[2]

ART. 112. *Effects of deceased persons—Disposition of.*—In case of the death of any person subject to military law, the commanding officer of the place or command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to convert such effects into cash, by public or private sale, not earlier than thirty days after the death of the deceased, and to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated

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act, and that, in the absence of language making it impossible to give it this meaning, it is to be regarded as directory only.

For the foregoing reasons and in consideration of long-established practice, *held*, that a certificate of discharge is not necessary to a discharge, but that a soldier may be discharged without a certificate or before he is furnished with a certificate, upon notice actual or constructive, and that when volunteers are mustered out it is that act that separates them from the service. From report of Judge Advocate General, January 2, 1901. (See Card 9556—W. D. Cir., Feb. 15, 1901.)

As to discharge by purchase or on account of dependent parent, see para. 1044, 1044a, ante.

For decisions upon discharge, see Dig. Op., J. A. G., pp. 433–463.

[1] The taking of the oath prescribed by this article is not an essential to the validity of an enlistment. It is, however, an almost invariable part of a regular formal enlistment, and in the absence of any provision in our law defining in what an enlistment shall consist, it is important that it should not be omitted for the reason that the oath as taken and subscribed by the party constitutes the regular and in some cases the only legal written evidence that the personal act of enlisting has been completed by him. Dig. of J. A. G. 603 IA 2 and 602, note 1. See Grimley's case (137 U. S. 147), in which it was held that the oath of allegiance was the pivotal fact which changed the status from that of civilian to soldier. Section 11 of the act of August 3, 1861 (12 Stat. 289), conferred authority to administer the oath of allegiance upon any commissioned officer of the Army.

The statement in regard to age, incorporated in the printed blank which contains the form of oath prescribed by this article, is no part whatever of the legal oath. (Dig. Op. J. A. G. 603 IA 2a.) As to the method of enlistment in the case of volunteers, see Dig. Op. J. A. G. 604, note 3.

[2] See Dig. Op. J. A. G., 178 CXIV A.

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in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposit, accompanied by any will or other papers of value belonging to the deceased, an inventory of the effects secured by said summary court, and a full account of his transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers or enlisted men of the Army; but if in the meantime the legal representative, or widow, shall present himself or herself to take possession of decedent's estate the said summary court shall turn over to him or her all effects not sold and cash belonging to said estate, together with an inventory and account, and make to the War Department a full report of his transactions.[1]

The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment.

ART. 113. *Inquests.*—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States any person shall have been found dead under circumstances which appear to require investigation the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and for this purpose such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

ART. 114. *Authority to administer oaths.*—Any judge advocate or acting judge advocate, the president of a general or special court-martial, any summary court-martial, the judge advocate or any assistant judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law.

[1] See the title "Deceased officers," in the chapter entitled "Commissioned officers."

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ART. 115. *Appointment of reporters and interpreters.*—Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission, or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission.

ART. 116. *Powers of assistant judge advocates.*—An assistant judge advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the judge advocate of the court.

ART. 117. *Removal of civil suits.*—When any civil suit or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section thirty-three of the Act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause.

ART. 118. *Officers—Separation from service.*—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction.[1]

[1] So an unauthorized dismissal, by order of a regular officer, may be in effect made operative by a subsequent appointment and confirmation of a successor, as in Blake's case. (Dig. Op. J. A. G., par. 1206, ed. 1901.)

Held that it could not affect the operation of an order summarily dismissing an officer as "second lieutenant" that, before its being communicated to him

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ART. 119. *Rank and precedence among regulars, militia, and volunteers.*—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted or called into service of the United States; and, third, officers of the volunteer forces: *Provided*, That officers of the Regular Army holding commissions in forces drafted or called into the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the Regular Army; the rank of officers of the Regular Army under commissions in the National Guard as such shall not, for the purposes of this article, be held to antedate the acceptance of such officers into the service of the United States under said commissions.

ART. 120. *Command when different corps or commands happen to join.*—When different corps or commands of the military forces of

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by being promulgated to the regiment, he had become by promotion a first lieutenant. (Id., par. 1211.)

Where, by the direction of the President, an order was issued canceling the muster-in of a volunteer officer on account of facts indicating that he was not a fit person to hold a commission, *held* that this was a legal exercise of the authority of summary dismissal for cause vested in the President by the act of July 17, 1862. (Id., par. 1210.)

The President had not the same power of dismissal in the case of a volunteer officer as he has in that of a regular officer. This for the reason that the tenure of office of the former is for a fixed term and for a limited time only; the power to dismiss is thus, in his case, not an incident of the appointing power. But the President was invested with a special power of dismissal of volunteer officers by the act of Congress of July 17, 1862. (Id., par. 1210.)

Held that the ruling in Blake's case (103 U. S. 231) was applicable, and that the office of an army officer might legally be vacated by the appointment and commission of a successor, although between the office of the original officer and that of the successor there may have intervened a tenure by a third officer. (Id., par. 1207.)

Thus (1) Captain A was dismissed from his office without legal authority; (2) Captain B, an unassigned officer, was assigned to the captaincy of A, and held it till his own resignation, one year and three months later; (3) Lieutenant C was then promoted and appointed to the office and his appointment was confirmed. *Held* that Lieutenant C was the legal incumbent of the office. (Id., par. 1207.)

Held that the ruling of the Supreme Court in the case of Blake was not applicable to volunteer officers of State organizations, and that a governor of a State, who had duly appointed a certain volunteer officer in a regiment, was not empowered to dismiss him by simply appointing to the same office, commissioning, and causing to be mustered into the United States service another person. (Id., par. 1208.)

See also Dig. Op. J. A. G. 819, 2 a to 821, 2 f; 849 I A 1 a; also Military Law and Precedents, Winthrop, 1143–1173.

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the United States happen to join or do duty together the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President.[1]

ART. 121. *Complaints of wrongs.*—Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Departwent of War a true statement of such complaint, with the proceedings had thereon.[2]

Date when Act shall take effect.—The provisions of section three of this Act shall take effect and be in force on and after the first day of March, nineteen hundred and seventeen: *Provided*, That articles four, thirteen, fourteen, fifteen, twenty-nine, forty-seven, forty-nine, and ninety-two shall take effect immediately upon the approval of this Act. *Sec. 4, Act of Aug. 29, 1916 (39 Stat. 670).*

Punishment of offenses committed and enforcement of penalties, etc., imposed prior to taking effect of Act.—All offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of this Act, under any law embraced in or modified, changed, or repealed by this Act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this Act had not been passed. *Sec. 5, Id.*

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[1] See also Dig. Op. J. A. G. 179–CXXII.

[2] The right in charges and appeals is not to be exercised in any mode or style the subordinate pleases, but with some reasonable circumspection, and in good faith, and in subjection to the controlling law of discipline, which, to sustain military authority, requires obedience and forbids disobedience to commanding officers. These rights, and the mode of exercising them, have been well and carefully defined in the General Order from the War Department of No. 16 of 1851. Under color of charges or appeals, a subordinate has no right to avail himself of the opportunity to behave with contempt to his commanding officer. Where such a case is alleged in the specifications, a court-martial will entertain and try the charge. (G. O. No. 1 A. G. O. 1856.)

In the case of Bvt. Maj. Henshaw, tried by court-martial in 1856 for disrespect to his commanding officer, Maj. Andrews, Seventh Infantry, the conduct of Maj. Andrews was thus remarked on by the Secretary of War: "An experienced officer who had served with him (Major A.) admits his treatment of his men to be harsh and violent and his conduct very reprehensible in this respect. This was the considerate testimony of a friendly witness, and is such evidence of the fact as calls for a decided expression of the opinion of the President. A commanding officer has no right to be insulting, harsh, or abusive to those in his command. Both officers and enlisted men are equally entitled to be protected from ill-treatment by him. An officer who commits such offenses is wanting in some of the essential qualifications for command, and it is to be regretted that a thorough investigation of this matter was not made by putting Maj. Andrews on trial. (G. O. No. 1, A. G. O., 1851.)

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SUPPLEMENT

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CHAPTER I.

THE PRESIDENT.

	Par.		Par.
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1a. *Threats against the President, punishment for.*—Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding one thousand dollars or imprisoned not exceeding five years, or both. *Act of Feb 14, 1917 (Pub. No. 319, 39 Stat. —).*

12a. *Details of clerks to the Executive Office.*—Employees of the executive departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States for such temporary assistance as may be necessary. *Act of May 10, 1916 (39 Stat. 76).*

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35a. *Lump-sum appropriations, payment of additional salaries to employees from, forbidden.*—It shall not be lawful hereafter to pay to any person, employed in the service of the United States under any general or lump-sum appropriation, any sum additional to the regular compensation received for or attached to any employment held prior to an appointment or designation as acting for or instead

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of an occupant of any other office or employment. This provision shall not be construed as prohibiting regular and permanent appointments by promotion from lower to higher grades of employments. *Sec. 12, Act of Aug. 1, 1914 (38 Stat. 680).*

40a. *Officers and employees of executive departments, etc., established and to continue from year to year.*—The officers and employees of the United States whose salaries are herein appropriated for are established and shall continue from year to year to the extent they shall be appropriated for by Congress. *Sec. 6, Act of Mar. 4, 1915 (38 Stat. 1049).*

BUREAU OF EFFICIENCY.

40b. *Created as independent establishment.*—Hereafter the Division of Efficiency of the Civil Service Commission shall be an independent establishment and shall be known as the Bureau of Efficiency; and the officers and employees of the said division shall be transferred to the Bureau of Efficiency without reappointment, and the records and papers pertaining to the work of the said division and the furniture, equipment, and supplies that have been purchased for it shall be transferred to the said bureau. *Act of Feb. 28, 1916 (39 Stat. 15).*

40c. *Duties relating to efficiency ratings transferred to.*—The duties relating to efficiency ratings imposed upon the Civil Service Commission by section four of the legislative, executive, and judicial appropriation Act approved August twenty-third, nineteen hundred and twelve, and the duty of investigating the administrative needs of the service relating to personnel in the several executive departments and independent establishments, imposed on the Civil Service Commission by the legislative, executive, and judicial appropriation Act approved March fourth, nineteen hundred and thirteen, are transferred to the Bureau of Efficiency. *Id.*

40d. *Same—Establish and maintain system of efficiency ratings, investigate duplication of work, etc.*—To enable the Bureau of Efficiency, authorized by the urgent deficiency appropriation Act approved February twenty-eighth, nineteen hundred and sixteen, to establish and maintain a system of efficiency ratings, to investigate administrative needs of the service relating to personnel in the several executive departments and independent establishments, required by the legislative, executive, and judicial appropriation Acts for the fiscal years nineteen hundred and thirteen and nineteen hundred and fourteen, respectively, and to investigate duplication of statistical and other work and methods of business in the various branches of the Government service * * *. *Act of May 10, 1916 (39 Stat. 76).*

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40e. *Same—Investigate methods of auditing accounts of disbursing officers, etc.*—The Bureau of Efficiency shall investigate the methods of examining and auditing claims against the United States and accounts of disbursing officers and of accounting for receipts and disbursements and shall submit a report to the Secretary of the Treasury and to Congress, with recommendations, at its next regular session. *Act of Mar. 3, 1917 (Pub. No. 381, 39 Stat. —).*

40f. *Same—Investigate and report upon methods of transacting business in Civil Service Commission.*—The Bureau of Efficiency shall investigate the methods of transacting the public business in the Civil Service Commission and report to Congress through the President at the next regular session of Congress. The officers and employees of the Civil Service Commission are hereby directed to furnish said bureau with such information as it may require to carry out this provision. *Id.*

40g. *Same—Ascertain rates of pay of State and municipal employees.*—The Bureau of Efficiency shall ascertain the rates of pay of employees of various State and municipal governments and commercial institutions in different parts of the United States and shall submit to Congress at its next regular session a report showing how such rates compare with the rates of pay of employees of the Federal Government performing similar services. *Id.*

40h. *Same—Executive departments to furnish information, access to records, etc.*—Officers and employees of the executive departments and other establishments shall furnish authorized representatives of the Bureau of Efficiency with all information that the bureau may require for the performance of the duties imposed on it by law, and shall give such representatives access to all records and papers that may be needed for that purpose. *Id.*

40i. *Same—Investigate classification, salary, and efficiency of employees of executive departments, etc.*—The Bureau of Efficiency shall investigate the classification, salary, and efficiency of the employees of the departments and independent establishments of the Government in the District of Columbia and report fully or partially to Congress by January first, nineteen hundred and eighteen, as to needed equalization or reclassification, and if a partial report be submitted then a full report shall be submitted as soon thereafter as possible, with such recommendations as the bureau may deem proper. *Id.*

40j. *Same—Investigate and report upon duplication of service in executive departments, etc.*—The Bureau of Efficiency shall investigate duplication of service in the various executive departments and establishments of the Government, including bureaus and divisions, and make a report to the President thereon, and the President is hereby authorized, after such report shall have been made to him,

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wherever he finds such duplications to exist to abolish the same. Report of the action taken hereunder shall be made to Congress at its next regular session. *Sec. 8, id.*

44a. *Increased compensation at rate of ten and five per centum to employees of certain grades.*—To provide, during the fiscal year nineteen hundred and eighteen, for increased compensation at the rate of ten per centum per annum to employees who receive salaries at a rate per annum less than $1,200, and for increased compensation at the rate of five per centum per annum to employees who receive salaries at a rate not more than $1,800 per annum and not less than $1,200 per annum, so much as may be necessary is appropriated. *Sec. 7, act of Mar. 3, 1917 (Pub. No. 381, 39 Stat. ——).*

44b. *Same—Application of; detailed reports to Congress.*—This section shall only apply to the employees who are appropriated for in this Act specifically and under lump sums or whose employment is authorized herein: *Provided further*, That detailed reports shall be submitted to Congress on the first day of the next session showing the number of persons, the grades or character of positions, the original rates of compensation, and the increased rates of compensation provided for herein. *Id.*

COMPENSATION FOR INJURIES TO FEDERAL EMPLOYEES.

66a. *No compensation for injuries from certain causes.*—The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death. *Sec. 1, act of Sept. 7, 1916 (39 Stat. 742).*

66b. *No compensation during first three days of disability.*—During the first three days of disability the employee shall not be entitled to compensation except as provided in section nine. No compensation shall at any time be paid for such period. *Sec. 2, id. 743.*

66c. *Compensation for total disability.*—If the disability is total the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of his monthly pay, except as hereinafter provided. *Sec. 3, id.*

66d. *Compensation for partial disability.*—If the disability is partial the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of such partial

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disability. The commission may, from time to time, require a partially disabled employee to make an affidavit as to the wages which he is then receiving. In such affidavit the employee shall include a statement of the value of housing, board, lodging, and other advantages which are received from the employer as a part of his remuneration and which can be estimated in money. If the employee, when required, fails to make such affidavit, he shall not be entitled to any compensation while such failure continues, and the period of such failure shall be deducted from the period during which compensation is payable to him. *Sec. 4, id.*

66e. *Same—Compensation ceases on refusal to perform suitable work.*—If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation. *Sec. 5, id.*

66f. *Maximum and minimum compensation for total disability, and maximum compensation for partial disability.*—The monthly compensation for total disability shall not be more than $66.67 nor less than $33.33, unless the employee's monthly pay is less than $33.33, in which case his monthly compensation shall be the full amount of his monthly pay. The monthly compensation for partial disability shall not be more than $66.67. In the case of persons who at the time of the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the commission shall, on any review after the time when the monthly wage-earning capacity of such persons would probably, but for the injury, have increased, award compensation based on such probable monthly wage-earning capacity. The commission may, on any review after the time when the monthly wage-earning capacity of the disabled employee would probably, irrespective of the injury, have decreased on account of old age, award compensation based on such probable monthly wage-earning capacity. *Sec. 6, id.*

66g. *During receipt of compensation to receive no other salary or pay from United States, except for services rendered or as Army or Navy pension.*—As long as the employee is in receipt of compensation under this Act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States. *Sec. 7, id.*

66h. *Compensation may begin four days after expiration of annual or sick leave.*—If at the time the disability begins the employee has

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annual or sick leave to his credit he may, subject to the approval of the head of the department, use such leave until it is exhausted, in which case his compensation shall begin on the fourth day of disability after the annual or sick leave has ceased. *Sec. 8, id.*

66i. *Injured employees entitled to reasonable medical, surgical, and hospital services and supplies.*—Immediately after an injury sustained by an employee while in the performance of his duty, whether or not disability has arisen, and for a reasonable time thereafter, the United States shall furnish to such employee reasonable medical, surgical, and hospital services and supplies unless he refuses to accept them. Such services and supplies shall be furnished by United States medical officers and hospitals, but where this is not practicable shall be furnished by private physicians and hospitals designated or approved by the commission and paid for from the employees' compensation fund. If necessary for the securing of proper medical, surgical, and hospital treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund. *Sec. 9, id.*

66j. *Death resulting from injury within six years, rates of pay.*—If death results from the injury within six years, the United States shall pay to the following persons for the following periods a monthly compensation equal to the following percentages of the deceased employee's monthly pay, subject to the modification that no compensation shall be paid where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury. *Sec. 10, id. 744.*

66k. *Same—To widow, if there is no child.*—To the widow, if there is no child, thirty-five per centum. This compensation shall be paid until her death or marriage. *Id., clause A.*

66l. *Same—To the widower, if there is no child.*—To the widower, if there is no child, thirty-five per centum if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage. *Id., clause B.*

66m. *Same—To the widow or widower, if there is a child, and to minor child.*—To the widow or widower, if there is a child, the compensation payable under clause (A) or clause (B) and in addition thereto ten per centum for each child, not to exceed a total of sixty-six and two thirds per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support, becomes capable of self-support. *Id., clause C.*

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66n. *Same—To children in absence of widow or widower.*—To the children, if there is no widow or widower, twenty-five per centum for one child and ten per centum additional for each additional child, not to exceed a total of sixty-six and two-thirds per centum, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian. *Id., clause D.*

66o. *Same—To dependent parents in absence of widow, widower, or child.*—To the parents, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per centum; if both are wholly dependent, twenty per centum to each; if one is or both are partly dependent, a proportionate amount in the discretion of the commission. *Id., clause E.*

66p. *Same—To dependent parents where there is widow, widower, or child.*—The above percentages shall be paid if there is no widow, widower, or child. If there is a widow, widower, or child, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of sixty-six and two-thirds per centum. *Id.*

66q. *Same—To dependent brothers, sisters, grandparents, and grandchildren, in absence of widow, widower, child, or dependent parent.*—To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per centum to such dependent; if more than one are wholly dependent, thirty per centum, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more partly dependent, ten per centum divided among such dependents share and share alike. *Id., clause F.*

66r. *Same—To dependent brothers, sisters, grandparents, and grandchildren, where there is widow, widower, child, or dependent parent.*—The above percentages shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of sixty-six and two-thirds per centum. *Id. 745.*

66s. *Same—Duration of compensation under clauses E and F.*—The compensation of each beneficiary under clauses (E) and (F) shall be paid for a period of eight years from the time of the death, unless before that time he, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and in-

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capable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian. *Id., clause G.*

66t. *Same—Definition of terms child, brother, sister parent, widow, widower, etc.*—As used in this section, the term "child" includes stepchildren, adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. The term "parent" includes stepparents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption," as used in this clause, include only legal adoption prior to the time of the injury. *Id., clause H.*

66u. *Compensation of remaining persons where compensation of one person ceases.*—Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedant's death. *Id., clause I.*

66v. *Commission may modify apportionment to avoid injustice when made to two or more classes.*—In case there are two or more classes of persons entitled to compensation under this section and the apportionment of such compensation, above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case. *Id., clause J.*

66w. *Same—Total monthly compensation not to exceed monthly pay at a maximum of one hundred dollars and a minimum of fifty dollars.*—In computing compensation under this section, the monthly pay shall be considered not to be more than $100, nor less than $50, but the total monthly compensation shall not exceed the monthly pay computed as provided in section twelve. *Id., clause K.*

66x. *Same—Penalty for accepting compensation after right to ceases.*—Any person entitled to compensation under this section, whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage he shall be punished by a fine of not more than $2,000 or by imprison-

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ment for not more than one year, or by both such fine and imprisonment. *Id., clause L.*

66y. *Burial expenses of employees dying from injuries, and transportation of their remains.*—If death results from the injury within six years the United States shall pay to the personal representative of the deceased employee burial expenses not to exceed $100, in the discretion of the commission. In the case of an employee whose home is within the United States, if his death occurs away from his home office or outside of the United States, and if so desired by his relatives, the body shall, in the discretion of the commission, be embalmed and transported in a hermetically sealed casket to the home of the employee. Such burial expenses shall not be paid and such transportation shall not be furnished where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury. *Sec. 11, id.*

66z. *Practice of particular branch of service to be followed in computing monthly pay; overtime pay not to be counted.*—In computing the monthly pay the usual practice of the service in which the employee was employed shall be followed. Subsistence and the value of quarters furnished an employee shall be included as part of the pay, but overtime pay shall not be taken into account. *Sec. 12, id. 746.*

66aa. *Partial disability, method of determining employee's wage-earning capacity.*—In the determination of the employee's monthly wage-earning capacity after the beginning of partial disability, the value of housing, board, lodging, and other advantages which are received from his employer as a part of his remuneration and which can be estimated in money shall be taken into account. *Sec. 13, id.*

66bb. *Lump-sum payment in certain cases in lieu of monthly compensation, method of determining amount of.*—In cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than $5 a month, or if the beneficiary is or is about to become a nonresident of the United States, or if the commission determines that it is for the best interests of the beneficiary, the liability of the United States for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed sixty months' compensation. The probability of the happening of any other con-

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tingency affecting the amount or duration of the compensation shall be disregarded. *Sec. 14, id.*

66cc. *Written notice of injury to employee, time limit for giving.*—Every employee injured in the performance of his duty, or some one on his behalf, shall, within forty-eight hours after the injury, give written notice thereof to the immediate superior of the employee. Such notice shall be given by delivering it personally or by depositing it properly stamped and addressed in the mail. *Sec. 15, id.*

66dd. *Same—Information which notice shall contain.*—The notice shall state the name and address of the employee, the year, month, day, and hour when and the particular locality where the injury occurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice. *Sec. 16, id.*

66ee. *Same—Failure to give notice within time limit may be waived for cause.*—Unless notice is given within the time specified or unless the immediate superior has actual knowledge of the injury, no compensation shall be allowed, but for any reasonable cause shown, the commission may allow compensation if the notice is filed within one year after the injury. *Sec. 17, id.*

66ff. *Claim for compensation, time limit for and method of making.*—No compensation under this Act shall be allowed to any person, except as provided in section thirty-eight, unless he or some one on his behalf shall, within the time specified in section twenty, make a written claim therefor. Such claim shall be made by delivering it at the office of the commission or to any commissioner or to any person whom the commission may by regulation designate, or by depositing it in the mail properly stamped and addressed to the commission or to any person whom the commission may by regulation designate. *Sec. 18, id.*

66gg. *Same—To be made on forms, accompanied by certificate, etc.*—Every claim shall be made on forms to be furnished by the commission and shall contain all the information required by the commission. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the commission may waive the provisions of this section. *Sec. 19, id.*

66hh. *Same—Original claims for disability and death, time limit.*—All original claims for compensation for disability shall be made within sixty days after the injury. All original claims for compensation for death shall be made within one year after the death. For any reasonable cause shown the commission may allow original

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claims for compensation for disability to be made at any time within one year. *Sec. 20, id. 747.*

66ii. *Examination of employees receiving compensation, method of making, and penalty for refusal to submit to.*—After the injury the employee shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the commission, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this Act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him. *Sec. 21, id.*

66jj. *Same—Appointment of third physician to examine in case of disagreement between physicians of commission and employee.*—In case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the commission shall appoint a third physician, duly qualified, who shall make an examination. *Sec. 22, id.*

66kk. *Same—Fees for examinations on part of United States to be fixed by commission.*—Fees for examinations made on the part of the United States under sections twenty-one and twenty-two by physicians who are not already in the service of the United States shall be fixed by the commission. Such fees, and any sum payable to the employee under section twenty-one, shall be paid out of the appropriation for the work of the commission. *Sec. 23, id.*

66ll. *Report of injury to be made to commission by employee's superior.*—Immediately after an injury to an employee resulting in his death or in his probable disability his immediate superior shall make a report to the commission containing such information as the commission may require, and shall thereafter make such supplementary reports as the commission may require. *Sec. 24, id.*

66mm. *No payment to assignee or creditor.*—Any assignment of a claim for compensation under this Act shall be void, and all compensation and claims therefor shall be exempt from all claims of creditors. *Sec. 25, id.*

66nn. *Injury involving claim against third person, etc., assignment of to United States.*—If an injury or death for which compen-

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sation is payable under this Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the commission may require said beneficiary to prosecute said action in his own name. *Sec. 26, id.*

66oo. *Same—Penalty for failure to assign or to prosecute claim in own name.*—If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the commission, he shall not be entitled to any compensation under this Act. *Id.*

66pp. *Same—Disposition by United States of money received in settlement of such claim.*—The cause of action when assigned to the United States may be prosecuted or compromised by the commission, and if the commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deducting the amount of any compensation already paid to the beneficiary and the expenses of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury. *Id.*

66qq. *Money received by beneficiary in settlement of third person's liability for the injury, disposition of.*—If an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in some person other than the United States to pay damages therefor, and a beneficiary entitled to compensation from the United States for such injury or death receives, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such beneficiary shall, after deducting the costs of suit and a reasonable attorney's fee, apply the money or other property so received in the following manner. *Sec. 27, id.*

66rr. *Same—If compensation has been paid in whole or in part by United States.*—If his compensation has been paid in whole or in part, he shall refund to the United States the amount of compensation which has been paid by the United States and credit any surplus upon future payments of compensation payable to him on account of the same injury. Any amount so refunded to the United States shall be placed to the credit of the employees' compensation fund. *Id., clause A, 748.*

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66ss. *Same—If no compensation has been paid by United States.*—If no compensation has been paid to him by the United States, he shall credit the money or other property so received upon any compensation payable to him by the United States on account of the same injury. *Id., clause B.*

66tt. *United States Employees' Compensation Commission, composition, term, and salary of.*—A commission is hereby created, to be known as the United States Employees' Compensation Commission, and to be composed of three commissioners appointed by the President, by and with the advise and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms the commissioner then appointed shall be appointed for a period of six years. Each commissioner shall receive a salary of $4,000 a year. The principal office of said commission shall be in Washington, District of Columbia, but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this Act. *Sec. 28, id.*

66uu. *Same—Pending claims transferred to the commission, together with certain clerks.*—Upon the organization of said commission and notification to the heads of all executive departments that the commission is ready to take up the work devolved upon it by this Act, all commissions and independent bureaus, by or in which payments for compensation are now provided, together with the adjustment and settlement of such claims, shall cease and determine, and such executive departments, commissions, and independent bureaus shall transfer all pending claims to said commission to be administered by it. The said commission may obtain in all cases, in addition to the reports provided in section twenty-four, such information and such reports from employees of the departments as may be agreed upon by the commission and the heads of the respective departments. All clerks and employees now exclusively engaged in carrying on said work in the various executive departments, commissions, and independent bureaus shall be transferred to and become employees of the commission at their present grades and salaries. *Sec. 28a, id.*

66vv. *Commission authorized to issue process, administer oaths, etc.*—The commission, or any commissioner by authority of the commission, shall have power to issue subpœnas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evi-

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dence, to administer oaths, and to examine witnesses upon any matter within the jurisdiction of the commission. *Sec. 29, id.*

66ww. *Same—Assistants, clerks, and other employees.*—The commission shall have such assistants, clerks, and other employees as may be from time to time provided by Congress. They shall be appointed from lists of eligibles to be supplied by the Civil Service Commission, and in accordance with the civil-service law. *Sec. 30, id.*

66xx. *Commission to submit annual estimates.*—The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the commission. *Sec. 31, id. 749.*

66yy. *Same—To make rules and regulations for enforcement of, and to decide questions arising under Act.*—The commission is authorized to make necessary rules and regulations for the enforcement of this Act, and shall decide all questions arising under this Act. *Sec. 32, id.*

66zz. *Same—Annual report to Congress.*—The commission shall make to Congress at the beginning of each regular session a report of its work for the preceding fiscal year, including a detailed statement of appropriations and expenditures, a detailed statement showing receipts of and expenditures from the employees' compensation fund, and its recommendations for legislation. *Sec. 33, id.*

66aaa. *Appropriation for expenses of commission, fiscal year 1917.*—For the fiscal year ending June thirtieth, nineteen hundred and seventeen, there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of $50,000 for the work of the commission, including salaries of the commissioners and of such assistants, clerks, and other employees as the commission may deem necessary, and for traveling expenses, expenses of medical examinations under sections twenty-one and twenty-two, reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, rent and equipment of offices, purchase of books, stationery, and other supplies, printing and binding to be done at the Government Printing Office, and other necessary expenses. *Sec. 34, id.*

66bbb. *Permanent appropriation for employees' compensation fund.*—There is hereby authorized to be appropriated, from any money in the treasury not otherwise appropriated, the sum of $500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is hereby authorized to be permanently appro-

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priated for the payment of the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine, and the transportation and burial expenses provided by sections nine and eleven. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund. *Sec. 35, id.*

66ccc. *Commission to make finding of facts and award on claim presented.*—The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for or against payment of the compensation provided for in this Act. Compensation when awarded shall be paid from the employees' compensation fund. *Sec. 36, id.*

66ddd. *Same—Review of award on application or on its own motion.*—If the original claim for compensation has been made within the time specified in section twenty, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation. *Sec. 37, id.*

66eee. *Same—Cancellation and recovery of award paid under mistake of law or fact.*—If any compensation is paid under a mistake of law or of fact, the commission shall immediately cancel any award under which such compensation has been paid and shall recover, as far as practicable, any amount which has been so paid. Any amount so recovered shall be placed to the credit of the employees' compensation fund. *Sec. 38, id.*

66fff. *Penalty for false affidavit or statement in support of claim.*—Whoever makes, in any affidavit required under section four or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. *Sec. 39, id.*

66ggg. *Definition of terms used in Act.*—Wherever used in this Act—

The singular includes the plural and the masculine includes the feminine.

The term "employee" includes all civil employees of the United States and of the Panama Railroad Company.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section twenty-eight.

The term "physician" includes surgeons.

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The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury. *Sec. 40, id. 750.*

66hhh. *Repealing clause.*—All acts or parts of acts inconsistent with this Act are hereby repealed. *Sec. 41, id.*

66iii. *Compensation for injuries occurring prior to passage of Act to be paid under old law.*—For injuries occurring prior to the passage of this Act compensation shall be paid under the law in force at the time of the passage of this Act. *Id.*

66jjj. *Compensation, method of paying, where liability exists in Panama Railroad Company for the injury.*—If an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in the Panama Railroad Company to pay damages therefor under the laws of any State, Territory, or possession of the United States or of the District of Columbia or of any foreign country, no compensation shall be payable until the person entitled to compensation releases to the Panama Railroad Company any right of action which he may have to enforce such liability of the Panama Railroad Company, or until he assigns to the United States any right which he may have to share in any money or other property received in satisfaction of such liability of the Panama Railroad Company. *Id.*

66kkk. *Transfer of administration of Act as to employees of Panama Canal and Alaska Engineering Commission.*—The President may, from time to time, transfer the administration of this Act so far as employees of the Panama Canal and of the Panama Railroad Company are concerned to the governor of the Panama Canal, and so far as employees of the Alaskan Engineering Commission are concerned to the chairman of that commission, in which cases the words "commission" and "its" wherever they appear in this Act shall, so far as necessary to give effect to such transfer, be read "governor of the Panama Canal" or "chairman of the Alaskan Engineering Commission," as the case may be, and "his"; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for the Panama Canal or for the Alaskan Engineering Commission or out of funds of the Panama Railroad, as the case may be, instead of out of the appropriation for the work of the commission. *Sec. 42, id.*

66lll. *Waiver of notice of claims as to employees of Panama Canal and Panama Railroad Company; modification of minimum limit as to aliens, etc.*—In the case of compensation to employees of the Panama Canal or of the Panama Railroad Company for temporary disability, either total or partial, the President may authorize the

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governor of the Panama Canal to waive, at his discretion, the making of the claim required by section eighteen. In the case of alien employees of the Panama Canal or of the Panama Railroad Company, or of any class or classes of them, the President may remove or modify the minimum limit established by section six on the monthly compensation for disability and the minimum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed. The President may authorize the governor of the Panama Canal and the chairman of the Alaskan Engineering Commission to pay the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal and for the Alaskan Engineering Commission, such appropriations to be reimbursed for such payments by the transfer of funds from the employees' compensation fund. *Id.*

75a. *Authorized to exchange typewriters, adding machines, and other labor saving devices.*—The executive departments and other Government establishments and all branches of the public service may hereafter exchange typewriters, adding machines, and other similar labor saving devices in part payment for new machines used for the same purpose as those proposed to be exchanged. There shall be submitted to Congress, on the first day of the session following the close of each fiscal year, a report showing, as to each exchange hereunder, the make of the article, the period of its use, the allowance therefor, and the article, make thereof, and price, including exchange value, paid or to be paid for each article procured through such exchange. *Sec. 5, act of Mar. 4, 1915 (38 Stat. 1161).*

77a. *Subscriptions for periodicals for executive departments.*—Hereafter subscriptions to periodicals, which have been certified in writing by the respective heads of the executive departments or other Government establishments to be required for official use, may be paid in advance from appropriations available therefor. *Sec. 5, act of Mar. 4, 1915 (38 Stat. 1049).*

81a. *Business methods—Restriction on payments to experts to inaugurate new, etc.*—No part of any money appropriated in this or any other Act shall be used for compensation or payment of expenses of accountants or other experts in inaugurating new or changing old methods of transacting the business of the United States or the District of Columbia unless authority for the employment of such services or payment of such expenses is stated in specific terms in the Act making provision therefor and the rate of compensation for such services or expenses is specifically fixed therein, or be used for compensation of or expenses for persons, aiding or assisting such accountants or other experts, unless the rate of compensation of or

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expenses for such assistants is fixed by officers or employees of the United States or District of Columbia having authority to do so, and such rates of compensation or expenses so fixed shall be paid only to the person so employed. *Sec. 5, act of Apr. 6, 1914 (38 Stat. 335).*

82a. *Purchases of passenger-carrying vehicles restricted to specific authorization.*—No appropriation made in this or any other Act shall be available for the purchase of any motor-propelled or horse-drawn passenger-carrying vehicle for the service of any of the executive departments or other Government establishments, or any branch of the Government service, unless specific authority is given therefor, and after the close of the fiscal year nineteen hundred and fifteen there shall not be expended out of any appropriation made by Congress any sum for purchase, maintenance, repair, or operation of motor-propelled or horse-drawn passenger-carrying vehicles for any branch of the public service of the United States unless the same is specifically authorized by law, and in the estimates for the fiscal year nineteen hundred and sixteen and subsequent fiscal years there shall be submitted in detail estimates for such necessary appropriations as are intended to be used for purchase, maintenance, repair, or operation of all motor-propelled or horse-drawn passenger-carrying vehicles, specifying the sums required, the public purposes for which said vehicles are intended, and the officials or employees by whom the same are to be used.[1] *Sec. 5, act of July 16, 1914 (38 Stat. 508).*

87a. *Estimates of appropriations, official to be designated to supervise and prepare for each department, etc.*—Hereafter the head of each executive department and other Government establishment shall, on or before July first in every fiscal year, designate from among the officials employed therein one person whose duty it shall be to supervise the classification and compilation of all estimates of appropriations, including supplemental and deficiency estimates to be submitted by such department or establishment. In the performance of their duties persons so designated shall have due regard for the requirements of all laws respecting the preparation of estimates, including the manner and time of their submission through the Treasury Department to Congress; they shall also, as nearly as may be practicable, eliminate from all such estimates unnecessary words and make uniform the language commonly used in expressing purposes or conditions of appropriations. *Sec. 3, act of June 23, 1913 (38 Stat. 75).*

91a. *Special or additional estimates, transmission of, to Congress.*—The Secretary of the Treasury shall not hereafter transmit special

[1] *Held*, that ordinary motorcycles are passenger-carrying vehicles within the prohibition of the act. (Comp. Treas., Sept. 8, 1916. War Dept. Bull. 39, Oct. 6, 1916.)

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or additional estimates of appropriations to Congress unless they shall conform to the requirements of section four of the Act approved June twenty-second, nineteen hundred and six (Thirty-fourth Statutes, page four hundred and forty-eight). *Sec. 4, act of Sept. 8, 1916 (39 Stat. 830).*

96a. *Estimates for lump-sum appropriations, statements required in annual Book of Estimates.*—Section six of the sundry civil appropriation Act approved August twenty-fourth, nineteen hundred and twelve, is amended to read as follows:

"SEC. 6. That there shall be submitted hereafter, in the annual Book of Estimates following every estimate for a general or lump-sum appropriation, except public buildings or other public works constructed under contract, a statement showing in parallel columns:

"First, the number of persons, if any, intended to be employed and the rates of compensation to each, and the amounts contemplated to be expended for each of any other objects or classes of expenditures specified or contemplated in the estimate, including a statement of estimated unit cost of any construction work proposed to be done; and

"Second, the number of persons, if any, employed and the rate of compensation paid each, and the amounts expended for each other object or class of expenditure, and the actual unit cost of any construction work done, out of the appropriation corresponding to the estimate so submitted, during the completed fiscal year next preceding the period for which the estimate is submitted.

"Other notes shall not be submitted following any estimate embraced in the annual Book of Estimates other than such as shall suggest changes in form or order of arrangement of estimates and appropriations and reasons for such changes." *Sec. 10, act of Aug. 1, 1914 (38 Stat. 680).*

96b. *Same—To be submitted according to uniform and concise methods.*—The information required in connection with estimates for general or lump-sum appropriations by section ten of the sundry civil appropriation Act, approved August first, nineteen hundred and fourteen, shall be submitted hereafter according to uniform and concise methods which shall be prescribed by the Secretary of the Treasury, but with reference to estimates for pay of mechanics and laborers there shall be submitted in detail only the ratings and trades and the rates per diem paid or to be paid. *Sec. 4, act of July 1, 1916 (39 Stat. 336).*

96c. *Report to Congress plans for improvement of harbors, etc., to facilitate operation of fleets for their defense.*—The Secretary of War and the Secretary of the Navy are authorized and directed to report to Congress at the earliest practicable date:

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First. Specific plans for improvement of the harbors and canals and connecting channels which, in their judgment, will best provide adequate facilities for operations of the fleet for defense of the harbors on the Atlantic, Gulf, and Pacific coasts of the United States.

Second. The feasible extensions requisite to make existing approved projects for improvement of the aforementioned harbors, canals, and channels available for the purposes stated in the foregoing paragraph.

Third. The cost of each such several improvements calculated upon the basis of completion thereof under contract within five years. *Act of Aug. 29, 1916 (39 Stat. 618).*

99a. *Rented buildings, District of Columbia, statement to include details of floor space, etc.*—Hereafter the statement of buildings rented within the District of Columbia for use of the Government, required by the act of July sixteenth, eighteen hundred and ninety-two (Statutes at Large, volume twenty-seven, page one hundred and ninety-nine),[1] shall indicate as to each building rented the area thereof in square feet of available floor space for Government uses, the rate paid per square foot for such floor space, the assessed valuation of each building, and what proportion, if any, of the rental paid includes heat, light, elevator, or other service. *Sec. 3, act of May 1, 1913 (38 Stat. 3.)*

104a. *Annual reports of American National Red Cross.*—The said American National Red Cross shall, on the first day of January of each year, make and transmit to the Secretary of War a report of its proceedings for the preceding year, including a full, complete, and itemized report of receipts and expenditures of whatever kind, which report shall be duly audited by the War Department, and a copy of said report shall be transmitted to Congress by the War Department. *Sec. 6, act of Jan. 5, 1905 (33 Stat. 602).*

104b. *Same—Period covered by change from calendar to fiscal year.*—Section six of the Act entitled "An Act to incorporate the American National Red Cross," approved January fifth, nineteen hundred and five, is hereby amended to read as follows:

"SEC. 6. That the said American National Red Cross shall as soon as practicable after the first day of July of each year make and transmit to the Secretary of War a report of its proceedings for the fiscal year ending June thirtieth next preceding, including a full, complete, and itemized report of receipts and expenditures of whatever kind, which report shall be duly audited by the War Depart-

[1] The act referred to, act of July 16, 1892 (27 Stat. 199), provides that "Hereafter it shall be the duty of the Secretary of the Treasury to cause to be prepared and submitted to Congress each year, in the annual Book of Estimates of Appropriations, a statement of the buildings rented within the District of Columbia for the use of the Government, the purposes for which rented, and the annual rental of each."

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ment, and a copy of said report shall be transmitted to Congress by the War Department." *Act of Feb. 27, 1917 (Pub. No. 362, 39 Stat. —.)*

106a. *Annual reports, date for furnishing to printer, etc.*—Appropriations herein and hereafter made for printing and binding shall not be used for any annual report or the accompanying documents unless the copy therefor is furnished to the Public Printer in the following manner: Copies of the documents accompanying such annual reports on or before the fifteenth day of October of each year; copies of the annual reports on or before the fifteenth day of November of each year; complete revised proofs of the accompanying documents and the annual reports on the tenth and twentieth days of November of each year, respectively; and all of said annual reports and accompanying documents shall be printed, made public, and available for distribution not later than within the first five days after the assembling of each regular session of Congress. The provisions of this section shall not apply to the annual reports of the Smithsonian Institution, the Commissioner of Patents, or the Comptroller of the Currency. *Sec. 3, act of July 1, 1916 (39 Stat. 336).*

114a. *Joint Committee on Printing, continuance of, vacancies in, and powers of during recess.*—Hereafter the members of the Joint Committee on Printing who are reelected to the succeeding Congress shall continue as members of said committee until their successors are chosen: *Provided*, That the President of the Senate and the Speaker of the House of Representatives shall, on the last day of a Congress, appoint Members of their respective Houses who have been elected to the succeeding Congress to fill any vacancies which may then be about to occur on said committee, and such appointees and the members of said committee who shall have been reelected shall continue until their successors are chosen. The Joint Committee on Printing shall, when Congress is not in session, exercise all the powers and duties devolving upon said committee as provided by law, the same as when Congress is in session. *Sec. 6, act of Mar. 3, 1917 (Pub. No. 381, 39 Stat. —).*

125a. *Public library depositaries to receive publications, etc., new designations authorized.*—Libraries heretofore designated by law as depositaries to receive books and other Government publications shall hereafter, during their existence, continue such receipt; and new designations may be made when libraries heretofore chosen shall cease to exist or other designations shall hereafter be authorized by law. *Sec. 5, act of June 23, 1913 (38 Stat., 75).*

131a. *Forging, etc., certificate of discharge.*—Whoever shall forge, counterfeit, or falsely alter any certificate of discharge from the mili-

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tary or naval service of the United States, or shall in any manner aid or assist in forging, counterfeiting, or falsely altering any such certificate, or shall use, unlawfully have in his possession, exhibit, or cause to be used or exhibited, any such forged, counterfeited, or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than $1,000 or imprisoned not more than one year, or both, in the discretion of the court. *Act of Mar. 4, 1917 (Pub. No. 391, 39 Stat. —).*

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CHAPTER III.

THE DEPARTMENT OF WAR.

	Par.
Volunteer regiments mustered out authorized to retain colors	149a
Sale of Army transports Meade and Crook authorized	150a
Reapportionment of space in the State, War, and Navy Department Building	154a
Same—No department or branch of the service to be ejected	154b
Same—Vacated rooms not to be used for museum purposes	154c
Bureau of Insular Affairs, existing law relating to organization of, not repealed	155a
Claims for damage to and loss of private property, settlement of, by Auditor for War Department on recommendation of Secretary of War	162a

149a. *Volunteer regiments mustered out authorized to retain colors.*—The Secretary of War be, and he is hereby, authorized to permit volunteer regiments, on being mustered out of the service of the United States, to retain all of their regimental colors. Said colors shall be turned over to the State authorities to which said regiments belong, and the regimental quartermaster in making his returns may, in lieu of said colors and in full release therefor, file with the proper official of the War Department a receipt from the quartermaster-general of said State that said colors have been delivered to said State authorities. *Act of Feb. 25, 1899 (30 Stat. 890).*

150a. *Sale of Army transports Meade and Crook authorized.*—Authority is hereby granted the Secretary of War to sell or otherwise dispose of, in accordance with law and regulations, the United States Army transports Meade and Crook. *Act of Aug. 29, 1916 (39 Stat. 634).*

154a. *Reapportionment of space in the State, War, and Navy Department Building.*—The commission in charge, or a majority of the members thereof, may at any time reapportion space among the departments now occupying the State, War, and Navy Department Building if the same can be done with a reduction of the amount of floor space occupied by any branch of the public service in said building, the reduction or avoidance of public expense for rent of office or storage space for the Government, and the reduction of the number

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of watchmen required for said building from forty to not more than thirty-eight. *Act of May 10, 1916 (39 Stat. 94).*

154b. *Same—No department or branch of the service to be ejected.*—No arrangement of space made hereunder shall involve the ejectment from the building of any department or branch of the public service now occupying the same. *Id.*

154c. *Same—Vacated rooms not to be used for museum purposes.*—No rooms vacated under any arrangement of space hereunder shall be used for museum purposes. *Id.*

155a. *Bureau of Insular Affairs, existing law relating to organization of not repealed.*—Nothing in this Act shall be construed to repeal existing laws relating to the organization of the Bureau of Insular Affairs of the War Department. *Sec. 14, act of June 3, 1916 (39 Stat. 176).*

162a. *Claims for damage to and loss of private property, settlement of by Auditor for War Department on recommendation of Secretary of War.*—For payment of claims for damages to and loss of private property incident to the training, practice, and operations of the Army that have accrued, or may hereafter accrue, from time to time, to be immediately available and to remain available until expended: *Provided*, That settlement of such claims shall be made by the Auditor for the War Department, upon the approval and recommendation of the Secretary of War, where the amount of damages has been ascertained by the War Department, and payment thereof will be accepted by the owners of the property in full satisfaction of such damages, * * *. *Act of Aug. 29, 1916 (39 Stat. 639.)*

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CHAPTER IV.

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

	Par.		Par.
Persons not to receive two salaries in excess of $2,000; exceptions	169a	Same—Amended so as not to apply to services heretofore rendered	169b

169a. *Persons not to receive two salaries in excess of two thousand dollars; exceptions.*—Unless otherwise specially authorized by law no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum, but this shall not apply to retired officers of the Army, Navy, or Marine Corps whenever they may be appointed or elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia.[1] *Sec. 6, act of May 10, 1916 (39 Stat. 120).*

169b. *Same—Amended so as not to apply to services heretofore rendered.*—Section six of an Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seventeen, namely:" approved May tenth, nineteen hundred and sixteen, is hereby amended so as to read as follows:

"SEC. 6. That unless otherwise specially authorized by law, no money appropriated by this or any other Act shall be available for

[1] *Held*, that in the case of a retired enlisted man of the Army his pay as such is not salary within the meaning of the above statute, also that a pension is not a salary within its inhibition. (Comp. W. W. Warwick, June 3, 1916, War Dept. Bull. 18, July 8, 1916.)

In the case of a quartermaster clerk who held a commission in the National Guard and was mustered into the Federal service, *Held*, that upon his muster into the Federal service he ceased to be a member of the National Guard, within the meaning of the Act of May 10, 1916, and became an officer of the Army, and as such was subject to the prohibition of that act. (Comp. Treas., Jan. 3, 1917, War Dept. Bull. 9, Feb. 2, 1917.)

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payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum, but this shall not apply to retired officers or enlisted men of the Army, Navy, Marine Corps, or Coast Guard, or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia: *Provided*, That no such retired officer, officer, or enlisted man shall be denied or deprived of any of his pay, salary, or compensation as such, or of any other salary or compensation for services heretofore rendered by reason of any decision or construction of said section six."[1] *Act of Aug. 29, 1916 (39 Stat. 582).*

[1] A provision in the act of Sept. 8, 1916 (39 Stat. 821), excepts A. B. Fry, a consulting engineer in another branch of the Federal service, from the restriction against his employment and payment in the Immigration Service at Ellis Island, N. Y.

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CHAPTER V.

THE TREASURY DEPARTMENT—THE ACCOUNTING OFFICERS.

	Par.
Annual reports by auditors as to outstanding checks	183a
Appropriations, reappropriation, and diversion of unexpended balances to be considered as new	191a
Canal Zone—Semiannual examination of accounts and vouchers, etc	200a
Loyalty restriction repealed as to claims for service in Army prior to April 13, 1861	215a
Damage or loss of baggage of officers and enlisted men shipped under orders—Recovery from United States in excess of amount paid by carrier	217a
Time limit for filing claim for arrears of pay, etc., of volunteers during Civil War	218a
Same—Attorneys' fees for prosecution of claims prohibited; penalty	218b
Lost checks—Issuance of duplicates	245a

183a. ***Annual reports by auditors as to outstanding checks.***—Hereafter at the termination of each fiscal year each Auditor of the Treasury shall report to the Secretary of the Treasury all checks issued by any disbursing officer of the Government as shown by his accounts rendered to such auditor, which shall then have been outstanding and unpaid for three years or more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, the number, and the amount for which it was drawn, and, when known, the residence of the payee. And such reports shall be in lieu of the returns required of disbursing officers by section three hundred and ten of the Revised Statutes. *Sec. 5, act of July 1, 1916 (39 Stat. 336).*

(See pars. 241 and 242.)

191a. ***Appropriations, reappropriation, and diversion of unexpended balances to be considered as new.***—The reappropriation and diversion of the unexpended balance of any appropriation to a purpose other than that for which it was originally made shall be construed and accounted hereafter as a new appropriation and the unexpended balance shall be reduced by the sum proposed to be so diverted. *Sec. 4, act of Mar. 4, 1915 (38 Stat. 1161).*

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200a. *Canal Zone—Semiannual examination of accounts and vouchers, etc.*—In prescribing regulations under the provisions of section five of the sundry civil act of August first, nineteen hundred and fourteen, the President shall provide that in lieu of furnishing to the auditor individual detail collection vouchers, not provided for in said regulations, two competent persons, one from the office of the Auditor for the War Department, designated by the auditor, and one from the office of the Comptroller of the Treasury, designated by the comptroller, shall be sent semiannually, at such time as may be designated by the comptroller, to the Canal Zone to examine the accounts and vouchers and verify the submitted schedules of collections and report in triplicate to the Auditor for the War Department, the Comptroller of the Treasury, and the auditor of the Panama Canal; and such persons shall make such other examination into the accounts of the Panama Canal as may be directed by the comptroller, and for all such purposes they shall have access to all records and papers pertaining thereto. Such examination and inspection shall be made for the period covered by the persons designated as soon as practicable, and the report of such persons shall be promptly filed. Such persons shall be furnished their transportation going and returning, including meals, and be paid a per diem of $4 from the day of sailing from the United States until return thereto, both days inclusive, in lieu of subsistence on the Isthmus and all other expenses, out of such appropriation for the Panama Canal as may be designated by the governor. *Sec. 3, act of Mar. 3, 1915 (38 Stat. 886).*

215a. *Loyalty restriction repealed as to claims for service in Army prior to April 13, 1861.*—Section thirty-four hundred and eighty of the Revised Statutes of the United States be, and the same is hereby, repealed so far as it affects payments for services in the Army of the United States prior to April thirteenth, eighteen hundred and sixty-one. *Act of July 6, 1914 (38 Stat. 454).*

217a. *Damage or loss of baggage of officers and enlisted men shipped under orders—Recovery from United States in excess of amount paid by carrier.*—The provisions of the Act of March third, eighteen hundred and eighty-five (Twenty-third Statutes, page three hundred and fifty), entitled "An Act to provide for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States," shall hereafter extend to cover loss of or damage to the regulation allowance of baggage of officers and enlisted men sustained in shipment under orders, to the extent of such loss or damage over and above the amount recoverable from the carrier furnishing the transportation. *Act of Mar. 4, 1915 (38 Stat. 1077).*

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218a. *Time limit for filing claim for arrears of pay, etc., of Volunteers during Civil War.*—No claim for arrears of pay, bounty, or other allowances growing out of the service of Volunteers who served in the Army of the United States during the Civil War shall be received or considered by the accounting officers of the Treasury unless filed in the office of the Auditor for the War Department on or before December thirty-first, nineteen hundred and twelve. *Act of Dec. 22, 1911 (37 Stat. 49).*

218b. *Same—Attorneys' fees for prosecution of claims prohibited; penalty.*—Hereafter no agent or attorney shall demand or accept, for his services in connection with the prosecution of claims for arrears of pay, bounty, or other allowances due on account of the services during the Civil War of an officer or enlisted man of the Regular or Volunteer Armies of the United States, filed after the passage of this Act, any fee for any services rendered in connection therewith. Whoever shall violate this provision upon conviction shall be punished by a fine of not exceeding five hundred dollars or imprisonment for a period not exceeding six months, or both, and shall be disbarred from practice before the Treasury Department. *Id.*

245a. *Lost checks—Issuance of duplicates.*—Whenever any original check is lost, stolen, or destroyed disbursing officers and agents of the United States are authorized, within three years from the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of original check, as the Secretary of the Treasury shall prescribe. *Sec. 3647, R. S., as amended by act of Mar. 21, 1916 (39 Stat. 37).*

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CHAPTER VII.

THE DEPARTMENT OF JUSTICE—HABEAS CORPUS—THE COURT OF CLAIMS.

Court of Claims—Jurisdiction over claims growing out of Civil War. Par. 277a.

277a. *Court of Claims—Jurisdiction over claims growing out of Civil War, etc.*—From and after the passage and approval of this Act the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States based upon or growing out of the destruction of any property or damage done to any property by the military or naval forces of the United States during the war for the suppression of the rebellion; nor to any claim for stores and supplies taken by or furnished to or for the use of the military or naval forces of the United States, nor to any claim for the value of any use and occupation of any real estate by the military or naval forces of the United States during said war; nor shall said Court of Claims have jurisdiction of any claim which is now barred by the provisions of any law of the United States. *Sec. 5, act of Mar. 4, 1915* (*38 Stat., 996.*)

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CHAPTER VIII.

THE DEPARTMENT OF THE NAVY—THE MARINE CORPS.

	Par.		Par.
Enlisted men on shore duty entitled to ration or commutation allowed to enlisted men of Army	304a	Officers and enlisted men of Medical Department of Navy serving with Marine Corps when detached for service with Army subject to articles of war	305a
Same—When impracticable to furnish Army ration may be allowed Navy ration or commutation thereof	304b		

304a. *Enlisted men on shore duty entitled to ration or commutation allowed to enlisted men of Army.*—No law shall be construed to entitle enlisted men on shore duty to any rations or commutation therefor other than such as are now or may hereafter be allowed enlisted men in the Army. *Act of Aug. 29, 1916 (39 Stat. 613).*

(The act of March 4, 1917 (Pub. No. 391, 39 Stat. —), contains a provision identical with above paragraph, except that the provision is preceded by the word hereafter.)

304b. *Same—When impracticable to furnish Army ration may be allowed Navy ration or commutation thereof.*—When it is impracticable or the expense is found greater to supply marines serving on shore duty in the island possessions and on foreign stations with the Army ration, such marines may be allowed the Navy ration or commutation thereof. *Id.*

(The act of March 4, 1917 (Pub. No. 391, 39 Stat. —), contains a provision identical with above paragraph.)

305a. *Officers and enlisted men of Medical Department of Navy serving with Marine Corps when detached for service with Army subject to articles of war.*—Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of section sixteen hundred and twenty-one of the Revised Statutes, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving. *Id. 573.*

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CHAPTER X.

THE MILITARY ESTABLISHMENT—GENERAL PROVISIONS OF ORGANIZATION.

THE REGULAR ARMY—THE VOLUNTEER ARMY AND THE MILITIA.[1]

	Par.
Composition of the Army of the United States	329a
Tour of duty of officers and enlisted men in Philippine Islands and the Canal Zone	330a
Composition of Regular Army	331a
Increase to be made in five increments	331b
May be immediately made in event of actual or threatened war	331c
Vacancies in grade of second lieutenant caused by increase, how filled	331d
Same—Vacancies not filled on graduation of cadet class; vacancies not caused by increase to be filled under existing law	331e
Enlisted men who have completed one year's service may become candidates for vacancies caused by increase	331f
Lineal and relative rank of second lieutenants appointed to original vacancies created by this act	331g
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Repealing clause	331i
Excessive enlistment of recruits to supply trained men for organizations serving outside limits of United States	332a
Increase of organizations to maximum strength in an emergency	332b
Same—Unassigned recruits, not to exceed five per centum of total enlisted strength, not to be counted	332c
Enlisted personnel of organizations of Regular Army to be maintained not below minimum strength	332d
Enlisted strength of the line of the Army, maximum	332e
Same—Unassigned recruits not to exceed seven per centum of authorized strength	332f
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[1] For statutes respecting the militia, see chapter entitled "The Militia."

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329a. *Composition of the Army of the United States.*—The Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law. *Sec. 1, Act of June 3, 1916 (39 Stat. 166).*

330a. *Tour of duty of officers and enlisted men in Philippine Islands and the Canal Zone.*—On and after October first, nineteen hundred and fifteen, no officer or enlisted man of the Army shall, except upon his own request, be required to serve in a single tour of duty for more than two years in the Philippine Islands, nor more than three years in the Panama Canal Zone, except in case of insurrection or of actual or threatened hostilities: *Provided further*, That the foregoing provision shall not apply to the organization known as the Philippine Scouts. *Act of Mar. 4, 1915 (38 Stat. 1078).*

331a. *Composition of Regular Army.*—The Regular Army of the United States, including the existing organizations, shall consist of sixty-four regiments of Infantry, twenty-five regiments of Cavalry, twenty-one regiments of Field Artillery, a Coast Artillery Corps, the brigade, division, army corps, and army headquarters, with their detachments and troops, a General Staff Corps, an Adjutant General's Department, an Inspector General's Department, a Judge Advocate General's Department, a Quartermaster Corps, a Medical Department, a Corps of Engineers, an Ordnance Department, a Signal Corps, the officers of the Bureau of Insular Affairs, the Militia Bureau, the detached officers, the detached noncommis-

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sioned officers, the chaplains, the Regular Army Reserve, all organized as hereinafter provided, and the following as now authorized by law: The officers and enlisted men on the retired list; the additional officers; the professors, the Corps of Cadets, the general Army service detachment, and detachments of Cavalry, Field Artillery, and Engineers, and the band of the United States Military Academy; the post noncommissioned staff officers; the recruiting parties, the recruit depot detachments, and unassigned recruits; the service school detachments; the disciplinary guards; the disciplinary organizations; the Indian Scouts; and such other officers and enlisted men as are now or may be hereafter provided for. *Sec. 2, act of June 3, 1916 (39 Stat. 166).*

(See paragraphs 332d, 332e, and 332f for the remaining provisions of this section.)

331b. *Increase to be made in five increments.*—Except as otherwise specifically provided by this Act, the increases in the commissioned and enlisted personnel of the Regular Army provided by this Act shall be made in five annual increments, each of which shall be, in each grade of each arm, corps, and department, as nearly as practicable, one-fifth of the total increase authorized for each arm, corps, and department. Officers promoted to vacancies created or caused by the addition of the first increment shall be promoted to rank from July first, nineteen hundred and sixteen, and those promoted to vacancies created or caused by the second increment shall be promoted to rank from July first, nineteen hundred and seventeen; those promoted to vacancies created or caused by the addition of the third increment shall be promoted to rank from July first, nineteen hundred and eighteen; those promoted to vacancies created or caused by the addition of the fourth increment shall be promoted to rank from July first, nineteen hundred and nineteen; and those promoted to vacancies created or caused by the addition of the fifth increment shall be promoted to rank from July first, nineteen hundred and twenty. *Sec. 24, id. 182.*

331c. *May be immediately made in event of actual or threatened war.*—In the event of actual or threatened war or similar emergency in which the public safety demands it the President is authorized to immediately organize the entire increase authorized by this Act, or so much thereof as he may deem necessary, and when, in the judgment of the President, war becomes imminent, all of said organizations that shall then be below the maximum enlisted strength authorized by law shall be raised forthwith to that strength, and shall be maintained as nearly as possible thereat so long as war, or the imminence of war, shall continue. *Id.*

331d. *Vacancies in grade of second lieutenant caused by increase; how filled.*—Vacancies in the grade of second lieutenant, created or

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caused by the increases due to this Act, in any fiscal year shall be filled by appointment in the following order: (1) Of cadets graduated from the United States Military Academy during the preceding fiscal year for whom vacancies did not become available during the fiscal year in which they were graduated; (2) under the provisions of existing law, of enlisted men, including officers of the Philippine Scouts, whose fitness for promotion shall have been determined by competitive examination; (3) of members of the Officers' Reserve Corps between the ages of twenty-one and twenty-seven years; (4) of commissioned officers of the National Guard between the ages of twenty-one and twenty-seven years; (5) of such honor graduates, between the ages of twenty-one and twenty-seven years, of distinguished colleges as are now or may hereafter be entitled to preference by general orders of the War Department; and (6) of candidates from civil life between the ages of twenty-one and twenty-seven years; and the President is authorized to make the necessary rules and regulations to carry these provisions into effect.[1] *Id.*

(See pars. 918 and 918a.)

331e. *Same—Vacancies not filled on graduation of cadet class; vacancies not caused by increase to be filled under existing law.*—Any such original vacancies not so filled, and remaining at the time of graduation of any class at the United States Military Academy, may be filled by the appointment of members of that class; and all vacancies in the grade of second lieutenant not created or caused by the increases due to this Act shall be filled as provided in the Act making appropriation for the support of the Army, approved March third, nineteen hundred and eleven. *Id.*

(See par. 918, post.)

331f. *Enlisted men who have completed one year's service may become candidates for vacancies caused by increase.*—Enlisted men of the Regular Army who have completed one year's service with an organization may become candidates for vacancies in the grade of second lieutenant created or caused by the increases due to the operation of this Act.[2] *Id.* 183.

(See par. 786a for next proviso of this section.)

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[1] *Held*, that both the examination and the appointment must come within the age limits specified by the statute, and that an applicant who failed in an examination was not eligible for a reexamination and appointment after he had passed the maximum age limit. (War Dept. Bull. 57, Dec. 22, 1916.)

[2] *Held*, That the service as an officer of the Phillippine Scouts would confer eligibility within the meaning of the statute quoted, upon the reenlistment of the men. (War Dept. Bull. 47, Nov. 16, 1916.)

Held, That the statute contemplates one year's service in the Army and that the officer of the Philippine Scouts was not qualified by reason of his service in the Marine Corps. (War Dept. Bull. 57, Dec. 22, 1916.)

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331g. *Lineal and relative rank of second lieutenants appointed to original vacancies created by this Act.*—Officers appointed to original vacancies in the grade of second lieutenant created or caused by this Act shall take lineal and relative rank according to dates of appointment, and the lineal and relative rank of second lieutenants appointed on the same date shall be determined under such regulations as the Secretary of War may prescribe.[1] *Id.*

(See par. 786a for the proviso preceding this paragraph, and pars. 931a, 930a, 930b, 961a, and 958a for the remaining provisions of this section.)

331h. *Saving clause.*—Nothing in this Act shall be held or construed so as to discharge any officer from the Regular Army or to deprive him of the commission which he now holds therein. *Sec. 127, id. 217.*

331i. *Repealing clause.*—All laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed. *Sec. 128, id.*

332a. *Excessive enlistment of recruits to supply trained men for organizations serving outside limits of United States.*—To fill vacancies occurring from time to time in the several organizations serving without the limits of the United States with trained men the President is authorized to enlist recruits in numbers equal to four per centum in excess of the total strength authorized for such organizations. *Sec. 29, act of Feb. 2, 1901 (31 Stat. 756).*

332b. *Increase of organizations to maximum strength in an emergency.*—When in the judgment of the President an emergency arises which makes it necessary, all organizations of the Army which are now below the maximum enlisted strength authorized by law shall be raised forthwith to that strength and shall be maintained as nearly as possible thereat so long as the emergency shall continue. *Joint resolution No. —, of Mar. 17, 1916 (39 Stat. 36).*

332c. *Same—Unassigned recruits, not to exceed five per centum of total enlisted strength, not to be counted.*—The total enlisted strength of any of said arms of the service shall not include unassigned recruits therefor at depots or elsewhere, but such recruits shall at no time exceed by more than five per centum the total enlisted strength prescribed for such arms; and the enlisted men now or hereafter authorized by law for other branches of the military service shall be

[1] *Held*, That the former statute was not modified by the latter provision and that the persons appointed provisional second lieutenants to fill vacancies created or caused by the act of June 3, 1916, and who have had commissioned service in the National Guard in the service of the United States or in the Philippine Scouts are entitled, under section 1219, Revised Statutes, to have the time so served as commissioned officers taken into account in fixing their relative and lineal rank.

Held further, That the benefit of former commissioned service under section 1219 of the Revised Statutes is effective only within the class from which the appointee is selected, since section 24 creates an order of preference in which appointments are made which is not disturbed by the provisions of section 1219, Revised Statutes. (War Department. Bull. 57, Dec. 22, 1916.)

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provided and maintained without any impairment of the enlisted strength prescribed for any of said arms. *Id.*

332d. *Enlisted personnel of organizations of Regular Army to be maintained not below minimum strength.*—Hereafter the enlisted personnel of all organizations of the Regular Army shall at all times be maintained at a strength not below the minimum strength fixed by law. *Sec. 2, act of June 3, 1916 (39 Stat. 166).*

(See par. 331a for the preceding provision of this section.)

332e. *Enlisted strength of the line of the Army, maximum.*—The total enlisted force of the line of the Regular Army, excluding the Philippine Scouts and the enlisted men of the Quartermaster Corps, of the Medical Department, and of the Signal Corps, and the unassigned recruits, shall not at any one time, except in the event of actual or threatened war or similar emergency in which the public safety demands it, exceed one hundred and seventy-five thousand men. *Id.*

332f. *Same—Unassigned recruits not to exceed seven per centum of authorized strength.*—The unassigned recruits at depots or elsewhere shall at no time, except in time of war, exceed by more than seven per centum the total authorized enlisted strength. *Id.*

332g. *Enlisted strength to be exclusive of soldiers sentenced to dishonorable discharge.*—The authorized enlisted strength of the Army and of organizations thereof shall be exclusive of soldiers under sentences which include confinement and dishonorable discharge.[1] *Act of Apr. 27, 1914 (38 Stat. 354).*

RETIREMENT OF OFFICERS OF PHILIPPINE SCOUTS.

339a. *Retirement of captains and lieutenants of Philippine Scouts who are citizens of the United States.*—Captains and lieutenants of Philippine Scouts who are citizens of the United States shall hereafter be entitled to retirement under the laws governing the retirement of enlisted men of the Regular Army, except that they shall be retired in the grade held by them at the date of retirement, shall be entitled to retirement for disability under the same conditions as officers of the Regular Army, and that they shall receive, as retired pay, the amounts allowed by law, as retired pay and allowances, of master signal electricians of the United States Army, and no more. *Sec. 26, act of June 3, 1916 (39 Stat. 185).*

339b. *Same—Double time for service beyond continental limits of United States not to be counted for purpose of.*—Double time for service beyond the continental limits of the United States shall not be counted for the purposes of this section so as to reduce the actual period of service below twenty years. *Id.*

[1] See par. 1049.

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339c. *Same—Former officers who resigned or were discharged on account of wounds received in action and were retired as enlisted men to receive benefit of section.*—Former officers of the Philippine Scouts who, because of disability occasioned by wounds received in action, have resigned or been discharged from the service, or who have heretofore served as such for a period of more than five years and have been retired as enlisted men, shall be placed upon the retired list as officers of Philippine Scouts and thereafter receive the retired pay and allowances provided by this section for other officers of Philippine Scouts. *Id.*

339d. *Same—Former officer who resigned or was discharged on account of disability contracted in line of duty and has been retired as enlisted man to receive benefit of section.*—Any former officer of Philippine Scouts who vacated his office in the Philippine Scouts by discharge or resignation on account of disability contracted in the line of duty and who was subsequently retired as an enlisted man, except any former officer of Philippine Scouts who has been retired as an enlisted man by special Act of Congress, shall be transferred to the retired list created by this section and shall thereafter receive the retired pay and allowances authorized by this section, and no more. Officers of Philippine Scouts retired under the provisions of this section shall not form part of the limited retired list now authorized by law. *Id.*

339e. *Same—Retirement of Bernard A. Schaaf, late a lieutenant of; credit for continuous service.*—The President of the United States is hereby authorized to place Bernard A. Schaaf, formely first sergeant of Company K, Eighth Regiment United States Infantry, and later a lieutenant of Philippine Scouts, on the retired list of the Army with the rank, pay, and allowance of a master signal electrician: *Provided*, That in computing the soldier's pay credit shall be given for all his continuous service in the Army. *Act of Feb. 8, 1917 (Pub. No. 304, 39 Stat. ——).*

PORTO RICO REGIMENT OF INFANTRY.

341a. *Organization same as Infantry regiment of Regular Army.*—The Porto Rico Regiment of Infantry of the United States Army shall hereafter have the same organization, and the same grades and numbers of commissioned officers and enlisted men, as are by this Act or shall hereafter be prescribed by law for other regiments of Infantry of the Army. *Sec. 21, act of June 3, 1916 (39 Stat. 180).*

343a. *Citizenship of enlisted personnel, and term of enlistment.*—All men hereafter enlisting in said regiment shall be natives of Porto Rico. All enlistments in the regiment shall hereafter be the same as is provided herein for the Regular Army, and the regiment,

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or any part thereof, may be ordered for service outside the island of Porto Rico. The pay and allowances of members of said regiment shall be the same as provided by law for officers and enlisted men of like grades in the Regular Army. *Id. 181.*

345a. *Colonel to be detailed from Infantry arm.*—The colonel of said regiment shall be detailed by the President, from among officers of Infantry of the Army not below the grade of lieutenant colonel, for a period of four years unless sooner relieved. *Id.*

345b. *Vacancies in grades of lieutenant colonel and major, how filled; captains and lieutenants eligible for details, transfers, etc.*—Vacancies created by this Act in the grades of lieutenant colonel and major in said regiment shall be filled by appointments from the senior captains in regimental rank of the Porto Rico regiment mentioned in the Act of March fourth, nineteen hundred and fifteen;[1] and captains and lieutenants of said regiment shall also be eligible for such detached service, transfer, or assignment to duty with other organizations as may be approved by the Secretary of War; but vacancies created by such detachment of officers shall not be filled by promotions or appointments. *Id.*

346a. *Permanent captains in, to be recommissioned as captains of Infantry, United States Army.*—The permanent captains of the Porto Rico Regiment of Infantry now holding commissions as such in said regiment shall be recommissioned as captains of Infantry of the United States Army, to take rank on the lineal list of officers of Infantry immediately after the junior officers of the same grade whose total commissioned service equals or exceeds theirs. *Act of Mar. 4, 1915 (38 Stat. 1070.)*

346b. *Same—Lineal and relative rank as captains of Infantry.*—Those officers of the Porto Rico Regiment of Infantry, recommissioned as captains of Infantry, whose total commissioned service is less than that of any officer of Infantry of the next lower grade, shall not advance on the lineal list of captains of Infantry, nor on the relative list of officers of the United States Army, until such time as there no longer remains on the lineal list of officers of Infantry any officer of the next lower grade of equal or greater length of total commissioned service and shall take rank in the grade of captain on the lineal list of officers of Infantry and on the relative list of officers of the United States Army immediately after the juniors in rank of such officers of Infantry of equal or greater total commissioned service. *Id.*

346c. *Same—Commissioned service to be counted in determining lineal and relative rank.*—For the purpose of this act total commissioned service shall include commissioned service in the Regular

[1] See pars. 346a, 346b, and 346c, post.

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Army, in the Volunteers, in the Porto Rico Provisional Regiment of Infantry, and in the Porto Rico Regiment of Infantry, and that the commissioned service of those officers of the Porto Rico Regiment of Infantry who were officers of the Porto Rico Provisional Regiment of Infantry, shall be counted as continuous and uninterrupted between the twenty-ninth day of June, nineteen hundred and eight, and the thirty-first day of December, nineteen hundred and eight. *Id.*

346d. *Lineal and relative rank of officers who held commissions in the Provisional Regiment on June 30, 1908.*—Officers of the Porto Rico Regiment of Infantry, United States Army, who held commissions in the Porto Rico Provisional Regiment of Infantry on June thirtieth, nineteen hundred and eight, shall now and hereafter take rank in their grades in the same relative order held by them in said Porto Rico Provisional Regiment of Infantry on June thirtieth, nineteen hundred and eight, subject to any loss in rank due to failure to pass examinations for promotion or to sentence of court-martial. *Sec. 21, act of June 3, 1916 (39 Stat. 181).*

347a. *Second lieutenants, appointment of.*—Vacancies created by this Act or occurring hereafter in the grade of second lieutenant in said regiment shall be filled during any calendar year by the appointment by the President, by and with the advice and consent of the Senate, of any native of Porto Rico graduated from the United States Military Academy, and, after such appointment shall have been made or provided for, by like appointment of native citizens of Porto Rico between twenty-one and twenty-seven years of age. *Id.*

348a. *Promotion to fill vacancies between grades of second lieutenant and colonel.*—All vacancies created by this Act or occurring hereafter in commissioned offices of said regiment above the grade of second lieutenant and below the grade of colonel shall, except as hereinafter provided to the contrary, be filled by promotion according to seniority in the several grades and within the regiment, subject to the examination prescribed by section three of the Act of Congress approved October first, eighteen hundred and ninety, and said section is hereby extended so as to apply in the cases of all officers below the grade of lieutenant colonel, who shall hereafter be examined for promotion in the Porto Rico Regiment of Infantry, except that the President may prescribe such a system of examination for the promotion of officers of said regiment as he may deem advisable. *Id. 180.*

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CHAPTER XI.

GENERAL OFFICERS AND AIDS.

	Par.		Par.
General officers of the line and staff	350a	Same—Officers eligible for appointment as, in time of peace	350c
Increase in number of general officers of line	350b		

350a. *General officers of the line and staff.*—Officers commissioned to and holding in the Army the office of a general officer shall hereafter be known as general officers of the line; officers commissioned to and holding in the Army an office other than that of a general officer, but to which the rank of a general officer is attached, shall be known as general officers of the staff. *Sec. 4, act of June 3, 1916 (39 Stat. 167).*

350b. *Increase in number of general officers of line.*—The number of general officers of the line now authorized by law is hereby increased by four major generals and nineteen brigadier generals. *Id.*

350c. *Same—Officers eligible for appointment as, in time of peace.*—Hereafter in time of peace major generals of the line shall be appointed from officers of the grade of brigadier general of the line, and brigadier generals of the line shall be appointed from officers of the grade of colonel of the line of the Regular Army. *Id.*

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CHAPTER XII.

RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.

	Par.
Relative rank — Commissioned service in Marine Corps to be considered in determining	353a
Composition of brigades, divisions, and corps	356a
Pay to clerks, messengers, and laborers at headquarters of several territorial departments, territorial districts, tactical divisions, and brigades, service schools, and office of the Chief of Staff	362a
Same—Increased pay for foreign service, employment of Filipinos, assignment to duty in War Department	362b
Headquarters clerks to be known as Army field clerks; rates of pay for; subject to Articles of War	362c
Same—Employed and assigned by Secretary of War; not to be assigned to duty in War Department	362d

353a. *Relative rank—Commissioned service in Marine Corps to be considered in determining.*—Any second lieutenant of the United States Marine Corps who may have been appointed second lieutenant of artillery since the second day of February, nineteen hundred and one, and prior to the passage of this Act, shall, in determining his lineal and relative rank, be entitled to the same credit for prior commissioned service as a lieutenant of volunteers appointed under the Act entitled "An Act to increase the efficiency of the permanent Military Establishment of the United States," approved February second, nineteen hundred and one. *Act of Dec. 20, 1904 (33 Stat. 595).*

356a. *Composition of brigades, divisions, and corps.*—The mobile troops of the Regular Army of the United States shall be organized, as far as practicable, into brigades and divisions. The President is authorized, in time of actual or threatened hostilities, or when in his opinion the interests of the public service demand it, to organize the brigades and divisions into such Army corps or armies as may be necessary. The typical Infantry brigade shall consist of a headquarters and three regiments of Infantry. The typical Cavalry brigade shall consist of a headquarters and three

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regiments of Cavalry. The typical Field Artillery brigade shall consist of a headquarters and three regiments of Field Artillery. The typical Infantry division shall consist of a headquarters, three Infantry brigades, one regiment of Cavalry, one Field Artillery brigade, one regiment of Engineers, one field signal battalion, one aero squadron, one ammunition train, one supply train, one engineer train, and one sanitary train. The typical Cavalry division shall consist of a headquarters, three Cavalry brigades, one regiment of Field Artillery (horse), one battalion of mounted Engineers, one field signal battalion (mounted), one aero squadron, one ammunition train, one supply train, one engineer train, and one sanitary train. The typical army corps shall consist of a headquarters, two or more Infantry divisions, one or more Cavalry brigades or a Cavalry division, one Field Artillery brigade, one telegraph battalion, and one field signal battalion, and such ammunition, supply, engineer, and sanitary trains as the President may deem necessary. A brigade, a division, an army corps, and an army headquarters shall consist of such officers, enlisted men, and civilians as the President may prescribe. Each supply train, ammunition train, sanitary train, and engineer train shall consist of such officers and enlisted men and shall be organized as the President may prescribe, the line officers necessary therewith to be detailed under the provisions of sections twenty-six and twenty-seven, Act of Congress approved February second, nineteen hundred and one. Nothing herein contained, however, shall prevent the President from increasing or decreasing the number of organizations prescribed for the typical brigades, divisions, and army corps, or from prescribing new and different organizations and personnel as the efficiency of the service may require.[1] *Sec. 3, act of June 3, 1916 (39 Stat. 166).*

362a. *Pay to clerks, messengers, and laborers at headquarters of several territorial departments, territorial districts, tactical divisions and brigades, service schools, and office of the Chief of Staff.*—One chief clerk, at the office of the Chief of Staff, $2,250 per annum; three clerks, at $2,000 each per annum; twelve clerks, at $1,800 each per annum; fifteen clerks, at $1,600 each per annum; thirty-eight

[1] *Held,* That in the organization of brigade headquarters the above provision would not authorize the creation of any grade not known to the law, such as a suggested brigade sergeant major, but that the President in the organization of brigade, division, or Army corps headquarters may employ such enlisted men in the grades and within the numerical limits authorized by law, in addition to those required for organizations, as he may determine to be necessary for the purpose, and may, therefore, include in the organization of a brigade headquarters as a part thereof and not detailed from any organization a sergeant major with the rank, pay, and allowances of whatever grade of sergeant major he may designate: *And further,* That he may also include in the organization of a brigade headquarters as personnel thereof and not pertaining to any other organization such enlisted men of other grades authorized by law as he may deem necessary. (War Dept. Bull. 34, Sept. 12, 1916.)

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clerks, at $1,400 each per annum; seventy clerks, at $1,200 each per annum; sixty-five clerks, at $1,000 each per annum; six clerks (Filipinos), at $500 each per annum; one captain of the watch, at $900 per annum; three watchmen, at $720 each per annum; one gardener, at $720 per annum; one packer, at $840 per annum; two messengers, at $840 each per annum; fifty-nine messengers, at $720 each per annum; six messengers (Filipinos), at $300 each per annum; one laborer, at $660 per annum; two laborers, at $600 each per annum; five charwomen, at $240 each per annum. In all, $312,690. Additional pay while on foreign service, $9,000. *Act of Mar. 4, 1915* (*38 Stat. 1067*).

362b. *Same—Increased pay for foreign service, employment of Filipinos, assignment to duty in War Department.*—On and after July first, nineteen hundred and fourteen, the pay of clerks and messengers at headquarters of territorial departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto: *Provided further*, That the money hereby appropriated for such of said clerks at $1,200 and $1,000 each per annum, and such of said messengers at $720 each per annum as may be employed and assigned by the Secretary of War to the headquarters of the Philippine Department, districts and posts therein, may, in case of vacancy and in the discretion of the commanding general, Philippine Department, be expended, in whole or in part, for the employment of Filipinos as clerks at not to exceed $500 each per annum, and messengers at not to exceed $300 each per annum.

And said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty with any bureau in the War Department. *Id.*

362c. *Headquarters clerks to be known as Army field clerks; rates of pay for; subject to articles of war.*—Hereafter headquarters clerks shall be known as Army field clerks and shall receive pay at the rates herein provided, and after twelve years of service, at least three years of which shall have been on detached duty away from permanent station, or on duty beyond the continental limits of the United States, or both, shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war. *Act of Aug. 29, 1916* (*39 Stat., 625*).

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362d. *Same—Employed and assigned by Secretary of War; not to be assigned to duty in War Department.*—Said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau in the War Department. *Id., 636.*

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CHAPTER XIII.

THE GENERAL STAFF CORPS.

	Par.
Details of officers, except general officers, to be made on recommendation of board of officers	365a
Promotion of officer while serving detail in General Staff Corps or other staff departments, status of	365b
General Staff Corps, composition of	366a
Same—Assignment to duty in the District of Columbia	369a
Employment restricted to study of military problems, etc	369b
Same—Supervision over War College, details and assignments to duty in	369c
Chief of Coast Artillery to be additional member of; certain organizations in office of Chief of Staff abolished and their duties transferred to other bureaus	370a
Duties limited to those specified in organic Act and in this section	370b
Penalty imposed upon superior for permitting subordinate to violate provisions of this section	370c

365a. *Details of officers, except general officers, to be made on recommendation of board of officers.*—No officer shall be detailed as a member of the General Staff Corps, other than the Chief of Staff and the general officers herein provided for as assistants to the Chief of Staff, except upon the recommendation of a board of five officers not below the rank of colonel, who shall be selected by the President or the Secretary of War, and neither the Chief of Staff nor more than two other members of the General Staff Corps, nor any officer not a member of said corps, who shall have been stationed or employed on any duty in or near the District of Columbia within one year prior to the date of convening of any such board, shall be detailed as a member thereof. No recommendation made by any such board shall, for more than one year after the making of such recommendation or at any time after the convening of another such board, unless again recommended by the new board, be valid as a basis for the detail of any officer as a member of the General Staff Corps; and no alteration whatever shall be made in any report or recommendation of any such board, either with or without the con-

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sent of members thereof, after the board shall have submitted such report or recommendation and shall have adjourned sine die.[1] *Sec. 5, act of June 3, 1916 (39 Stat. 168).*

(See paragraphs 366a, 369a, 369b for the provisions of this section preceding this paragraph.)

365b. *Promotion of officer while serving detail in General Staff Corps or other staff departments, status of.*—If any officer detailed in the General Staff Corps, or as an officer of any staff corps or department of the Army, shall be promoted to the next higher grade while so serving he may be permitted to serve out the period of his detail, and the number of officers in the organization in which he shall be serving and in the grade to which he shall have been promoted shall be increased by one for such time as he shall be an additional number in said organization and grade; but the whole number of officers detailed to said organization shall at no time exceed the aggregate of the numbers allowed to the several grades thereof by law other than this proviso. *Id. 169.*

(See paragraphs 366a, 369a, 365a, 365b, 370a, 370b, and 370c for the provisions of sec. 5 preceding this paragraph.)

366a. *General Staff Corps, composition of.*—The General Staff Corps shall consist of one Chief of Staff, detailed in time of peace from major generals of the line; two assistants to the Chief of Staff, who shall be general officers of the line, one of whom, not above the grade of brigadier general, shall be the president of the Army War College; ten colonels; ten lieutenant colonels; fifteen majors; and seventeen captains, to be detailed from corresponding grades in the Army, as in this section hereinafter provided. All officers detailed in the General Staff Corps shall be detailed therein for periods of four years, unless sooner relieved. While serving in the General Staff Corps officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps officers shall return to the branch of the Army in which they hold permanent commissions, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in time of actual or threatened hostilities. Section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, shall apply to each position vacated by officers below the grade of general officer detailed in the General Staff Corps. *Id. 167.*

[1] *Held*, that the service of officers on a board sitting in the District of Columbia which was found after the completion of its report to be illegal was not service in the District within the prohibition of the Act, and that they were not therefore by reason of such service ineligible for service on a new board. (War Dept. Bull. 18, July 8, 1916.)

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369a. *Same—Assignment to duty in the District of Columbia.*—Not more than one-half of all of the officers detailed in said corps shall at any time be stationed, or assigned to or employed upon any duty, in or near the District of Columbia.[1] (*Id., 167.*)

369b. *Employment restricted to study of military problems, etc.*—All officers detailed in said corps shall be exclusively employed in the study of military problems, the preparation of plans for the national defense and the utilization of the military forces in time of war, in investigating and reporting upon the efficiency and state of preparedness of such forces for service in peace or war, or on appropriate General Staff duties in connection with troops, including the National Guard, or as military attachés in foreign countries, or on other duties, not of an administrative nature, on which they can be lawfully and properly employed. *Id.*

(See paragraph 366a for the provision of section 5 preceding this paragraph.)

369c. *Same—Supervision over War College; details and assignments to duty in.*—The War College shall remain fully subject to the supervising, coordinating, and informing powers conferred by law upon members of the General Staff Corps, and officers for duty as instructors or students in or as attachés of said college may be selected and detailed freely from among members of said corps, but any officer so selected and detailed other than one director shall thereupon cease to be a member of said corps and shall not be eligible for redetail therein so long as he shall remain on said duty; and no officer on the active list of the Army shall, for more than thirty days in any calendar year, be attached to or assigned to duty in the War College in any capacity other than that of president, director, instructor, or student, or, unless a member of the General Staff Corps, be attached to or employed in the office of the Chief of Staff. *Id.* 168.

(See paragraph 365a for provision of section 5 preceding this paragraph.)

370a. *Chief of Coast Artillery to be additional member of; certain organizations in office of Chief of Staff abolished and their duties transferred to other bureaus.*—The organizations heretofore existing in or in connection with the office of the Chief of Staff under the

[1] *Held*, that as the law requires assignment of the officers, upon the approval of the Act, to some other station than one in or near the District of Columbia they could not retain station in Washington for any purpose; and that if not assigned to some other station than the one to which they are temporarily assigned for duty their right to receive commutation of quarters, heat, and light must depend on such temporary assignment. (*War Dept. Bull. 18, July 8, 1916.*)

Held, that general officers detailed to the General Staff Corps must be regarded as part of the one-half of the officers of the corps permitted to be assigned to or employed on duty in or near the District of Columbia. (*War Dept. Bull. 28, Aug 18, 1916.*)

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designations of the mobile army division and the Coast Artillery division be, and they are hereby, abolished and shall not be re-established. The business heretofore transacted in said division, except such as comes clearly within the general powers specified in and conferred upon members of the General Staff Corps by the organic Act of Congress approved February fourteenth, nineteen hundred and three,[1] is hereby transferred as follows, to wit, to the office of the Chief of Coast Artillery, all business apportioned to that office by law or Army regulations at the time of the creation of the Coast Artillery division of the office of the Chief of Staff; to the office of The Adjutant General or other bureau or bureaus concerned, all other business; and, subject to the exercise of the supervising, coordinating, and informing powers conferred upon members of the General Staff Corps by the Act of Congress last hereinbefore cited, the business transferred by this proviso to certain bureaus or offices shall hereafter be transacted exclusively by or under the direction of the respective heads thereof; and the Chief of Coast Artillery shall be an additional member of the General Staff Corps and shall also be advisor to and informant of the Chief of Staff in respect to the business under his charge. *Id.*

(See paragraph 369b for provision of section 5 preceding this paragraph.)

370b. *Duties limited to those specified in organic Act and in this section.*—Hereafter members of the General Staff Corps shall be confined strictly to the discharge of the duties of the general nature of those specified for them in this section and in the organic Act of Congress last hereinbefore cited, and they shall not be permitted to assume or engage in work of an administrative nature that pertains to established bureaus or offices of the War Department, or that, being assumed or engaged in by members of the General Staff Corps, would involve impairment of the responsibility or initiative of such bureaus or offices, or would cause injurious or unnecessary duplication of or delay in the work thereof. *Id.*

370c. *Penalty imposed upon superior for permitting subordinate to violate provisions of this section.*—All pay and allowances shall be forfeited by any superior for any period during which, by his order or his permission, or by reason of his neglect, any subordinate shall violate any of the foregoing provisions of this section. *Id. 169.*

[1] See paragraph 368, ante, or 32 Stat. 831.

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CHAPTER XIV.

THE STAFF DEPARTMENTS—GENERAL PROVISIONS—DISBURSING OFFICERS.

	Par.		Par.
Bonds may be waived in cases of officers of Quartermaster Corps who are not accountable for public funds or property	387a	Funds for stores or material procured by one bureau of War Department for another, etc., repayment of	417a

387a. *Bonds may be waived in cases of officers of Quartermaster Corps who are not accountable for public funds or property.*—Hereafter the provisions of section eleven hundred and ninety-one of the Revised Statutes of the United States may, in the discretion of the Secretary of War, be waived in the cases of officers of the Quartermaster Corps who are not accountable for public funds or public property. *Act of Aug. 29, 1916 (39 Stat. 626).*

417a. *Funds for stores or material procured by one bureau of War Department for another, etc., repayment of.*—Hereafter when one bureau of the War or Navy Departments procures by purchase or manufacture stores or material of any kind or performs any service for another bureau of such departments the funds of the bureau or department for which the stores or material are to be procured or the service performed may be placed subject to the requisition of the bureau or department making the procurement or performing the service for direct expenditure by it: *Provided*, That when the stores being procured are for current issue during the year stores of equal value may be issued from stock on hand in place of any of those aforesaid.[1] *Act of Mar. 4, 1915 (38 Stat. 1084).*

[1] There is no general statute governing the transfer or sale of Government property from one department to another. However, see pars. 619 and 671, A. R., 1913, covering the transfer of War Department property, and page 907, Dig. Opin. J. A. G., 1912, and 17 Opin. Att. Gen., 480, to the effect that "the transfer of public property from one bureau or department to another is not regarded as a sale."

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CHAPTER XV.

THE ADJUTANT GENERAL'S DEPARTMENT.[1]

	Par.		Par.
Adjutant General's Department, composition of	431a	Decision of War Department as to date of muster conclusive	455a

431a. *Adjutant General's Department, composition of.*—The Adjutant General's Department shall consist of The Adjutant General with the rank of brigadier general; seven adjutants general with the rank of colonel; thirteen adjutants general with the rank of lieutenant colonel; and thirty adjutants general with the rank of major. *Sec. 6, Act of June 3, 1916 (39 Stat. 169).*

455a. *Decision of War Department as to date of muster conclusive.*—Hereafter in administering the Act of Congress approved February twenty-fourth, eighteen hundred and ninety-seven, entitled "An Act to provide for the relief of certain officers and enlisted men of the volunteer forces," the decision of the War Department as to the right of any person to be held and considered to have been mustered into the service of the United States under the provisions of said Act shall be conclusive, and no claims shall be allowed or considered under said Act after the first day of January, nineteen hundred and eleven. *Act of Apr. 19, 1910 (36 Stat. 324).*

[1] For the statutes relating to the United States Disciplinary Barracks, the government and control of which was vested in The Adjutant General by par. 2, sec. 3, act of Mar. 4, 1915 (38 Stat. 1085), see pars. 475a–488b, post.

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CHAPTER XVI.

THE INSPECTOR GENERAL'S DEPARTMENT.

	Par.		Par.
Inspector General's Department, composition of	459a	Detail of acting inspector general	459b

459a. *Inspector General's Department, composition of.*—The Inspector General's Department shall consist of one Inspector General with the rank of brigadier general; four inspectors general with the rank of colonel; eight inspectors general with the rank of lieutenant colonel; and sixteen inspectors general with the rank of major.[1] *Sec. 7, Act of June 3, 1916 (39 Stat. 169).*

459b. *Detail of acting inspectors general.*—The Secretary of War may, in addition, detail officers of the line, not to exceed four, to act as assistant inspector-general: *Provided*, That officers of the line detailed as acting inspectors general shall have all the allowances of Cavalry officers of their respective grades. *Sec. 1, Act of June 23, 1874 (18 Stat. 244).*

[1] *Held*, That this provision does not repeal the authority contained in the act of June 23, 1874 (18 Stat. 244) to "detail officers of the line, not to exceed four, to act as assistant inspectors general" with pay and allowances as prescribed, which has been regarded by the department as permanent legislation and as not having been repealed by provisions similar to the above sec. 7 contained in the acts of Feb. 5, 1885 (23 Stat. 297), Mar. 2, 1899 (31 Stat. 701), and Feb. 2, 1901 (31 Stat. 751). (War Dept. Bull. 18, July 8, 1916.)

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CHAPTER XVII.

THE JUDGE ADVOCATE GENERAL'S DEPARTMENT—MILITARY PRISON.

	Par.
Judge Advocate General's Department, composition of	465a
Promotions below rank of colonel based on written examinations	467a
Same—Officers in grade of major found physically or mentally disqualified, board of review, etc	467b
Same—Lieutenant colonels found disqualified, suspension from promotion and retirement with or without promotion after final examination	467c
Vacancies, one to be filled by person from civil life with special qualifications	468a
Acting judge advocates, assignment of	469a
Details of acting judge advocates only excepted from operation of Manchu law; details for purpose of taking law course prohibited	469b
Revision and codification of military laws of United States, preparation of	471a
Same—Appropriation for expenses of	471b
United States Disciplinary Barracks	475a–488b
Military Prison, United States and branches, name changed to United States Disciplinary Barracks	475a
Military Prison, United States, name changed to United States Disciplinary Barracks	475b
Same—Military offenses punishable in a penitentiary, confinement may be in United States, State, Territory, or District penitentiary	475c
Same—Secretary of War may designate branch disciplinary barracks	476a
Same—Government and control of disciplinary barracks vested in The Adjutant General	477a
Same—Commandant and other commissioned and noncommissioned officers, etc., at, composition of	480a
Same—Duties of the commandant	481a
Same—Organization of disciplinary companies and higher units, etc	481b
Same—Clemency and restoration to colors of persons not discharged and reenlistment of discharged persons	488a
Parole of general prisoners in disciplinary barracks, and restoration to duty of those serving confinement in places other than disciplinary barracks	488b

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465a. *Judge Advocate General's Department, composition of.*—The Judge Advocate General's Department shall consist of one Judge Advocate General with the rank of brigadier general; four judge advocates with the rank of colonel; seven judge advocates with the rank of lieutenant colonel; and twenty judge advocates with the rank of major. *Sec. 8, Act of June 3, 1916 (39 Stat. 169).*

467a. *Promotions below rank of colonel based on written examinations.*—No officer of the Judge Advocate General's Department below the rank of colonel shall be promoted therein until he shall have successfully passed a written examination before a board consisting of not less than two officers of the Judge Advocate General's Department, to be designated by the Secretary of War, such examination to be prescribed by the Secretary of War and to be held at such time anterior to the accruing of the right to promotion as may be for the best interests of the service. *Id.*

(For the provisions of this section which precede this paragraph, see paragraphs 465a, 468a, 469a, and 469b.)

467b. *Same—Officers in grade of major found physically or mentally disqualified, board of review, etc.*—Should any officer in the grade of major of the Judge Advocate General's Department fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should be found disqualified for promotion for any other reason, a second examination shall not be allowed, but the Secretary of War shall appoint a board of review to consist of two officers of the Judge Advocate General's Department superior in rank to the officer examined, none of whom shall have served as a member of the board which examined him. If the unfavorable finding of the examining board is concurred in by the board of review, the officer reported disqualified for promotion shall be honorably discharged from the service with one year's pay. If the action of the examining board is disapproved by the board of review, the officer shall be considered qualified and shall be promoted. *Id. 170.*

467c. *Same—Lieutenant colonels found disqualified, suspension from promotion and retirement with or without promotion after final examination.*—Any lieutenant colonel of the Judge Advocate General's Department who, at his first examination for promotion to the grade of colonel, has been found disqualified for such promotion for any reason other than physical disability incurred in the line of duty shall be suspended from promotion and his right thereto shall pass successively to such officers next below him in rank as are or may become eligible to promotion under existing law during the period of his suspension; and any such officer suspended from promotion shall be reexamined as soon as practicable after the expiration

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of one year from the date of the completion of the examination that resulted in his suspension; and if on such reexamination he is found qualified for promotion, he shall again become eligible thereto; but if he is found disqualified by reason of physical disability incurred in line of duty in either examination, he shall be retired, with the rank to which his seniority entitled him to be promoted; and if he is not found disqualified by reason of such physical disability, but is found disqualified for promotion for any other reason in the second examination, he shall be retired without promotion. *Id.*

468a. *Vacancies, one to be filled by person from civil life with special qualifications.*—Of the vacancies created in the Judge Advocate General's Department by this Act, one such vacancy, not below the grade of major, shall be filled by the appointment of a person from civil life, not less than forty-five nor more than fifty years of age, who shall have been for ten years a judge of the Supreme Court of the Philippine Islands, shall have served for two years as a captain in the Regular or Volunteer Army, and shall be proficient in the Spanish language and laws. *Id.*

(For the provision of this section which immediately precedes this paragraph see 469a.)

469a. *Acting judge advocates, assignment of.*—Acting judge advocates may be detailed under the provisions of existing law for separate brigades and for separate general court-martial jurisdictions, and when not immediately required for service with a geographical department, tactical division, separate brigade, or other separate general court-martial jurisdiction, acting judge advocates may be assigned to such other legal duty as the exigencies of the service may require. *Id.*

(For the provision of this section which immediately precedes this paragraph see paragraph 465a.)

469b. *Details of acting judge advocates only excepted from operation of Manchu law; details for purpose of taking law course prohibited.*—So much of the Act of Congress approved August twenty-fourth, nineteen hundred and twelve,[1] as relates to the detachment or detail of officers for duty in the Judge Advocate General's Department shall hereafter be held to apply only to the acting judge advocates authorized by law; and hereafter no officer shall be or remain detached from any command or assigned to any duty or station with intent to enable or aid him to pursue the study of law. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 468a.)

471a. *Revision and codification of military laws of United States, preparation of.*—The Secretary of War is hereby directed to cause to

[1] Manchu law, par. 937, ante, or 37 Stat. 571, 645.

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be prepared, with as much expedition as may be consistent with thoroughness, to be finished within two years, a revision and codification of the military laws of the United States, which shall conform in scope and character to the revision and codification of the laws of the United States of a permanent and general nature directed by the Act of March third, nineteen hundred and one. The Secretary of War shall submit to Congress a report of progress of the revision and codification herein directed upon the first day of the second session of the Sixty-fourth Congress, and, when the revision and codification is completed, he shall cause a copy of the same, in print, to be submitted to Congress, that the statutes so revised and codified may be reenacted if Congress shall so determine. *Act of Aug. 29, 1916 (39 Stat. 627).*

471b. *Same—Appropriation for expenses of.*—For paying the expenses of clerical hire and printing and other expenses incident to the making of the revision and codification herein directed, not to exceed $5,000, to be expended upon certificates of the Secretary of War that the expenditures were necessary therefor. *Id.*

UNITED STATES DISCIPLINARY BARRACKS.

475a. *Military prison, United States and branches, name changed to United States Disciplinary Barracks.*—The United States military prison at Fort Leavenworth, Kansas, shall hereafter be known as the United States Disciplinary Barracks and the branches of said prison as branches of such barracks. *Act of Mar. 4, 1915 (38 Stat. 1074).*

475b. *Military prison, United States, name changed to United States Disciplinary Barracks.*—Chapter six, Title XIV, of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

The United States Military Prison, Fort Leavenworth, Kansas, shall hereafter be known as the United States Disciplinary Barracks, *Par. 1, sec. 2, act of Mar. 4, 1915 (38 Stat. 1084).*

475c. *Same—Military offenses punishable in a penitentiary, confinement may be in United States, State, Territory, or District penitentiary.*—Persons sentenced to confinement upon conviction by courts-martial or other military tribunals of crimes or offenses which, under some statute of the United States or under some law of the State, Territory, District, or other jurisdiction in which the crime or offense may be committed, are punishable by confinement in a penitentiary, including persons sentenced to confinement upon conviction by courts-martial or other military tribunals of two or more acts or omissions, any one of which, under the statute or other law hereinbefore mentioned, constitutes or includes a crime or offense punish-

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able by confinement in a penitentiary, may be confined at hard labor, during the entire period of confinement so adjudged, in any United States, State, Territorial, or District penitentiary, or in any other penitentiary directly or indirectly under the jurisdiction of the United States; and all persons sentenced to confinement upon conviction by courts-martial or other military tribunals who are not confined in a penitentiary may be confined and detained in the United States Disciplinary Barracks. *Par. 2, sec. 2, id.*

476a. *Same—Secretary of War may designate branch disciplinary barracks.*—The Secretary of War may, from time to time, designate any building or structure or any part thereof under the control of the Secretary of War and pertaining to the military establishment as a branch disciplinary barracks for the confinement and detention of offenders whom it is impracticable to send to the United States Disciplinary Barracks at Fort Leavenworth, Kansas; and all branch disciplinary barracks and all offenders sent thereto for confinement and detention therein shall be subject to the laws respecting the United States Disciplinary Barracks at Fort Leavenworth, Kansas, and the offenders sent thereto for confinement and detention therein. *Par. 8, sec. 2, id. 1086.*

477a. *Same—Government and control of disciplinary barracks vested in The Adjutant General.*—The government and control of the United States Disciplinary Barracks and of all offenders sent thereto for confinement and detention therein shall be vested in The Adjutant General of the Army under the direction of the Secretary of War, who shall from time to time make such regulations respecting the same as may be deemed necessary, and who shall submit annually to Congress a full statement of the financial and other affairs of said institution for the preceding fiscal year. *Par. 3, sec. 2, id. 1085.*

480a. *Same—Commandant and other commissioned and noncommissioned officers, etc., at, composition of.*—The officers of the United States Disciplinary Barracks shall consist of a commandant and such subordinate officers as may be necessary, who shall be detailed by the Secretary of War from the commissioned officers of the Army at large. In addition to detailing for duty at said disciplinary barracks such number of enlisted men of the Staff Corps and departments as he may deem necessary, the Secretary of War shall assign a sufficient number of enlisted men of the line of the Army for duty as guards at said disciplinary barracks and as noncommissioned officers of the disciplinary organizations hereinafter authorized. Said guards, and also the enlisted men assigned for duty as noncommissioned officers of disciplinary organizations, shall be detached from the line of the Army, or enlisted for the purpose; and said guards shall be organized as infantry, with noncommissioned officers, musicians, artificers, and cooks of the number and grades allowed by law for infantry organi-

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zations of like strength: *Provided*, That at least one of said guards shall have the rank, pay, and allowances of a battalion sergeant major. *Par. 4, sec. 2, id.*

(For authorization for the detail of 100 sergeants for duty with the disciplinary organizations at the United States Disciplinary Barracks, who shall be additional to the sergeants authorized for the corps, companies, troops, batteries, and detachments from which they may be detailed, see par. 1332a.)

481a. *Same—Duties of the commandant.*—The commandant of the United States Disciplinary Barracks shall have command thereof and charge and custody of all offenders sent thereto for confinement and detention therein; shall govern such offenders and cause them to be employed at such labor and in such trades and to perform such duties as may be deemed best for their health and reformation and with a view to their honorable restoration to duty or their reenlistment as hereinafter authorized; shall cause note to be taken and a record to be made of the conduct of such offenders; and may shorten the daily time of hard labor of those who by their obedience, honesty, industry, and general good conduct earn such favors—all under such regulations as the Secretary of War may from time to time prescribe. *Par. 5, sec. 2, id.*

481b. *Same—Organization of disciplinary companies and higher units, etc.*—The Secretary of War shall provide for placing under military training those offenders sent to the United States Disciplinary Barracks for confinement and detention therein whose record and conduct are such as to warrant the belief that upon the completion of a course of military training they may be worthy of an honorable restoration to duty or of being permitted to reenlist; may provide for the organization of offenders so placed under military training into disciplinary companies and higher units, organized as infantry, with noncommissioned officers, except color sergeants, selected or appointed from the enlisted men assigned to duty for that purpose pursuant to the provisions of paragraph four hereof; and may provide for uniforming, arming, and equipping such organizations. *Par. 6, sec. 2, id.*

488a. *Same—Clemency and restoration to colors of persons not discharged and reenlistment of discharged persons.*—Whenever he shall deem such action merited the Secretary of War may remit the unexecuted portions of the sentences of offenders sent to the United States Disciplinary Barracks for confinement and detention therein and in addition to such remission may grant those who have not been discharged from the Army an honorable restoration to duty, and may authorize the reenlistment of those who have been discharged or upon their written application to that end order their restoration to the Army to complete their respective terms of enlistment, and such application and order of restoration shall be effective to revive

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the enlistment contract for a period equal to the one not served under said contract. *Par. 7, sec. 2, id.*

488b. *Parole of general prisoners in disciplinary barracks, and restoration to duty of those serving confinement in places other than disciplinary barracks.*—The authority now vested in the Secretary of War to give an honorable restoration to duty, in case the same is merited, to general prisoners confined in the United States disciplinary barracks and its branches shall be extended so that such restoration may be given to general prisoners confined elsewhere, and the Secretary of War shall be, and he is hereby, authorized to establish a system of parole for prisoners confined in said barracks and its branches, the terms and conditions of such parole to be such as the Secretary of War may prescribe. *Act of Mar. 4, 1915 (38 Stat. 1074).*

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CHAPTER XVIII.

THE QUARTERMASTER CORPS.

	Par.
The Quartermaster Corps, composition of	495a
Chief to be Quartermaster General	501a
Enlisted men, composition of	506a
Enlisted strength, composition of	506b
Grade of military storekeeper revived for appointment of Charles P. Daly	513a
Appointment of quartermaster sergeants in Quartermaster Corps	514a
Master electricians hereafter to be known as quartermaster sergeants	514b
Duties of officers include construction and repair work	515a
Sale of surplus ice, electric current, etc., from Government plants where no competition	521a
Same—Disposition of proceeds of such sales	521b
Provision giving preference to transportation of troops and material of war amended so as to require prompt delivery in time of peace without regard to any embargo which may have been declared	525a
In time of war possession and control may be taken of transportation systems	525b
Transfer of vessels, equipment, stations, and personnel of Lighthouse Service to War Department in time of national emergency	534a
Same—Return of to Lighthouse Service when emergency ceases	534b
Same—Personnel while under jurisdiction of War Department subject to Articles of War	534c
Same—Secretaries of War, Navy, and Commerce to prescribe regulations governing duties of Lighthouse Service in time of war	534d
Shipping Board to have constructed or purchase, lease, or charter vessels suitable for use as Army transports or for other military purposes, etc	534e
Vessels of War Department, not needed for military purposes in time of peace, may be transferred to the board permanently or for limited periods	534f
Limit of cost of barracks and quarters	547a
Annual estimates for establishment and maintenance of rifle ranges	553a
Same—Established ranges to be open for use of any branch of military or naval service, and for civilians	553b
Same—Detail of officers and noncommissioned officers of Regular Army as instructors at, and issue of arms and ammunition for use of	553c

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	Par.
Extra-duty pay, United States disciplinary barracks guard, rates	563a
Extra-duty pay for mess stewards and cooks at recruit depots	563b
Civilian employees, restrictions on employment	570a
Proceeds from sale of cuttings of material for clothing, disposition of	578a
Quartermaster property, articles of, may be sold to officers of Navy and Marine Corps	588a
Sale of subsistence stores to officers and enlisted men of Navy and Marine Corps	588b
Commutation of rations for enlisted men of Army and Militia at national rifle match	611a
Commutation of rations for cadets, enlisted men, members of Nurse Corps, etc., rates of	611b
Funds appropriated for support of Army available for purchase of reserve supplies	616a
Appointment of Army pay clerk, with certain service, as first lieutenant, Quartermaster Corps	632a
Certain clerks to be known as field clerks, Quartermaster Corps, to receive allowances of pay clerks, and to be subject to the Articles of War	633a
Allowance of fuel, quarters, and forage	651a
Commutation of quarters to officers, etc., where no public quarters are available	668a
Same—Secretary of War may determine when and where public quarters are not available	668b
Commutation of quarters, heat, and light for officers, etc	668c
Officers on duty as observers with foreign armies in field, expenses of	673a
Mileage to engineer officers	675a
Subsistence expenses of officials—Allowances for, outside of District of Columbia limited	680a
Disbursement of certain appropriations heretofore made which shall constitute one fund	689a
Same	689b
Pay of noncommissioned officers and enlisted men	695a
Enlisted men prohibited from civil employment	701a
Act not to be construed as reducing pay or allowances of any enlisted man	702a
Detail of enlisted men for recruiting duty	704a
Temporary sergeants and corporals at recruiting depots	704b
One enlisted man at each recruit depot to have rank, pay, and allowances of a regimental sergeant major	704c
Transportation of change of station allowance of baggage on discharge for disability of enlisted man having 10 years or more of service	721a
Pay and allowances of soldiers sentenced to dishonorable discharge during execution of suspended sentence	727a

495a. *The Quartermaster Corps, composition of.*—The Quartermaster Corps shall consist of one Quartermaster General with the rank of major general; two assistants to the Quartermaster General with the rank of brigadier general; twenty-one colonels; twenty-four lieutenant colonels; sixty-eight majors; one hundred and eighty captains; and the pay clerks now in active service, who shall hereafter have the rank, pay, and allowances of a second lieutenant, and the President is hereby authorized to appoint and commission them, by

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and with the advice and consent of the Senate, second lieutenants in the Quartermaster Corps, United States Army[1] *Sec. 9, act of June 3, 1916 (39 Stat. 170).*

(See pars. 506b, 514b, and 515a for the ensuing provisions of this section.)

501a. *Chief to be Quartermaster General.*—Hereafter the title of the Chief of the Quartermaster Corps shall be Quartermaster General of the Army. *Act of Apr. 27, 1914 (38 Stat. 356).*

506a. *Enlisted men, composition of.*—The enlisted force of the Quartermaster Corps shall consist of not to exceed fifteen master electricians, three hundred and eighty sergeants (first class), one thousand two hundred and forty sergeants, six hundred corporals, two thousand nine hundred and twenty privates (first class), seven hundred and fifty privates, and ninety-five cooks, all of whom shall receive the same pay and allowances as enlisted men of corresponding grades in the Signal Corps of the Army, and shall be assigned to such duties pertaining to the Quartermaster Corps as the Secretary of War may prescribe. *Act of Mar. 4, 1915 (38 Stat. 1066).*

506b. *Enlisted strength, composition of.*—The total enlisted strength of the Quartermaster Corps and the number in each grade shall be limited and fixed from time to time by the President in accordance with the needs of the Army, and shall consist of quartermaster sergeants, senior grade; quartermaster sergeants; sergeants, first class; sergeants; corporals; cooks; privates, first class; and privates. The number in the various grades shall not exceed the following percentages of the total authorized enlisted strength of the Quartermaster Corps, namely: Quartermaster sergeants, senior grade, five-tenths of one per centum; quartermaster sergeants, six per centum; sergeants, first class, two and five-tenths per centum; sergeants, twenty-five per centum; corporals, ten per centum; privates, first class, forty-five per centum; privates, nine per centum; cooks, two per centum. *Sec. 9, act of June 3, 1916 (39 Stat. 170).*

(See par. 495a for the preceding provision and par. 514b and 515a for the ensuing provisions of this section.)

513a. *Grade of military storekeeper revived for appointment of Charles P. Daly.*—The President of the United States, in his discretion be, and he is hereby, authorized to appoint Charles P. Daly,

[1] A second lieutenant, Quartermaster Corps, commissioned from pay clerk under section 9 of the national-defense act, requested that he be transferred to second lieutenant of Infantry.

Held, that under existing laws such transfer is not authorized. (War Dept. Bull. 3, Jan. 19, 1917.)

Held, that the new positions created belong to the Quartermaster Corps as a whole, and the rule prescribed by the act of Aug. 3, 1912 (37 Stat., 591), in connection with the reorganization of that corps, is not applicable, and that the vacancies are required to be filled according to the general rule of seniority prescribed in sec. 1 of the act of Oct. 1, 1890 (26 Stat. 563). (War Dept. Bull. 18, Aug. 18, 1916.)

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chief clerk, office of the Quartermaster Corps, United States Army, a military storekeeper in the Quartermaster Corps, United States Army, with the rank, pay, and allowances of a captain, mounted; and the grade of military storekeeper is hereby revived in the Army of the United States for this purpose only. *Act of Aug. 29, 1916 (39 Stat. 626).*

514a. *Appointment of quartermaster sergeants in Quartermaster Corps.*—Hereafter the Secretary of War is authorized to appoint such number of quartermaster sergeants, Quartermaster Corps, not to exceed the number provided for by law, as he may deem necessary for the interest of the service, said quartermaster sergeants to be selected from the most competent noncommissioned officers of the Army, who shall have served therein at least five years, three years of such service having been rendered as noncommissioned officers, and whose character and education shall fit them to take charge of public property and to act as clerks and assistants to the proper officers of the Army in charge of public property.[1] *Act of Mar. 4, 1915 (38 Stat. 1066).*

514b. *Master electricians hereafter to be known as quartermaster sergeants, senior grade.*—The master electricians now authorized by law for the Quartermaster Corps shall hereafter be known as quartermaster sergeants, senior grade, and shall be included in the number of quartermaster sergeants, senior grade, herein authorized. *Sec. 9, Act of June 3, 1916 (39 Stat. 170).*

(See paragraph 506b for the provision of this section immediately preceding this paragraph.)

515a. *Duties of officers include construction and repair work.*—All work pertaining to construction and repair that has heretofore been done by or under the direction of officers of the Quartermaster Corps shall, except as otherwise now provided by laws or regulations, hereafter be done by or under the direction of officers of said corps. *Id. 171.*

521a. *Sale of surplus ice, electric current, etc., from Government plants where no competition.*—Whenever the ice machines, steam laundries, and electric plants shall not come in competition with private enterprise for sale to the public, and in the openion of the Secretary of War it becomes necessary to the economical use and administration of such ice machines, steam laundries, and electric plants as have been or may hereafter be established in pursuance of law, surplus ice may be disposed of, laundry work may be done for other branches of the Government, and surplus electric light and power may be sold on such terms and in accordance with such regu-

[1] For similar provision see Act of April 27, 1914. (39 Stat. 354).

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lations as may be prescribed by the Secretary of War. *Act of Aug. 29, 1916 (39 Stat. 631).*

521b. *Same—Disposition of proceeds of such sales.*—The funds received from such sales and in payment for such laundry work shall be used to defray the cost of operation of said ice, laundry, and electric plants, and the sales and expenditures herein provided for shall be accounted for in accordance with the methods prescribed by law, and any sums remaining after such cost of maintenance and operation have been defrayed shall be deposited in the Treasury to the credit of the appropriation from which the cost of operation of such plant is paid. *Id., 632.*

525a. *Provision giving preference to transportation of troops and material of war amended so as to require prompt delivery in time of peace without regard to any embargo which may have been declared.*—Section six of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended March second, eighteen hundred and eighty-nine, and June twenty-ninth, nineteen hundred and six, which reads:

"That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic," be amended to read as follows:

"That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expediate the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned." *Id., 604.*

525b. *In time of war possession and control may be taken of transportation systems.*—The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable. *Id., 645.*

534a. *Transfer of vessels, equipment, stations, and personnel of Lighthouse Service to War Department in time of national emergency.*—The President is hereby authorized, whenever in his judg-

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ment a sufficient national emergency exists, to transfer to the service and jurisdiction of the Navy Department, or of the War Department, such vessels, equipment, stations, and personnel of the Lighthouse Service as he may deem to the best interest of the country, and after such transfer all expenses connected therewith shall be defrayed out of the appropriations for the department to which transfer is made. *Id. 602.*

534b. *Same—Return of to Lighthouse Service when emergency ceases.*—Such vessels, equipment, stations, and personnel shall be returned to the Lighthouse Service when such national emergency ceases in the opinion of the President, and nothing in this Act shall be construed as transferring the Lighthouse Service or any of its functions from the Department of Commerce except in time of national emergency and to the extent herein provided. *Id.*

534c. *Same—Personnel while under jurisdiction of War Department subject to Articles of War.*—Any of the personnel of the Lighthouse Service who may be transferred as herein provided shall, while under the jurisdiction of the Navy Department or War Department, be subject to the laws, regulations, and orders for the government of the Navy or Army, as the case may be, in so far as the same may be applicable to persons whose retention permanently in the military service of the United States is not contemplated by law. *Id.*

534d. *Same—Secretaries of War, Navy, and Commerce to prescribe regulations governing duties of Lighthouse Service in time of war.*—The Secretary of the Navy, the Secretary of War, and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Lighthouse Service in time of war, and for the cooperation of that service with the Navy and War Departments in time of peace in preparation for its duties in war, and this may include arrangements for a direct line of communication between the officers or bureaus of the Navy and War Departments and the Bureau of Lighthouses to provide for immediate action on all communications from these departments. *Id.*

534e. *Shipping Board to have constructed or purchase, lease, or charter vessels suitable for use as Army transports or for other military purposes, etc.*—The board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels. *Sec. 5, act of Sept. 7, 1916 (39 Stat. 730).*

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534f. *Vessels of War Department not needed for military purposes in time of peace may be transferred to the board permanently or for limited periods.*—The President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business. *Sec. 6, Id.*

547a. *Limit of cost of barracks and quarters.*—Hereafter no money appropriated for military posts shall be expended for the construction of quarters for officers of the army or for barracks and quarters for the artillery the total cost of which, including the heating and plumbing apparatus, wiring, and fixtures, shall exceed, in the case of quarters of a general officer, the sum of fifteen thousand dollars; of a colonel or an officer above the rank of captain, twelve thousand dollars, and of an officer of and below the rank of captain, nine thousand dollars. *Sec. 1, act of June 25, 1910 (36 Stat. 721).*

553a. *Annual estimates for establishment and maintenance of rifle ranges.*—The Secretary of War shall annually submit to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges, under such a comprehensive plan as will ultimately result in providing adequate facilities for rifle practice in all sections of the country. *Sec. 113, Act of June 3, 1916 (39 Stat. 211).*

553b. *Same—Established ranges to be open for use of any branch of military or naval service, and for civilians.*—And that all ranges so established and all ranges which may have already been constructed, in whole or in part, with funds provided by Congress shall be open for use by those in any branch of the military or naval service of the United States and by all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the controlling authorities and approved by the Secretary of War. *Id.*

553c. *Same—Detail of officers and noncommissioned officers of Regular Army as instructors at, and issue of arms and ammunition for use of.*—The President may detail capable officers and noncommissioned officers of the Regular Army and National Guard to duty at such ranges as instructors for the purpose of training the citizenry in the use of the military arm. Where rifle ranges shall have been so established and instructors assigned to duty thereat, the Secretary of War shall be authorized to provide for the issue of a reasonable number of standard military rifles and such quantities of ammunition as may be available for use in conducting such rifle practice. *Id.*

563a. *Extra-duty pay, United States disciplinary barracks guard, rates.*—Hereafter the extra-duty pay to the United States dis-

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ciplinary barracks guard shall be at the following rates per day: Sergeants, thirty-five cents; corporals, thirty cents; and privates, twenty cents. *Act of Aug. 29, 1916 (39 Stat. 632).*

563b. *Extra-duty pay for mess stewards and cooks at recruit depots.*—Extra-duty pay at rates to be fixed by the Secretary of War for mess stewards and cooks at recruit depots who are graduates of the schools for bakers and cooks, and instructor cooks at the schools for bakers and cooks. *Id.*

570a. *Civilian employees, restrictions on employment.*—The number of and total sum paid for civilian employees in the Quartermaster Corps shall be limited to the actual requirements of the service, and that no employee therein shall receive a salary of more than $150 per month, except upon the approval of the Secretary of War. *Id., 636.*

578a. *Proceeds from sale of cuttings of material for clothing, disposition of.*—Hereafter the proceeds derived from the sale of surplus cuttings of material for clothing manufactured by the Quartermaster Corps of the Army shall be deposited to the credit of that appropriation out of which the material was purchased. *Id., 635.*

588a. *Quartermaster property, articles of, may be sold to officers of Navy and Marine Corps.*—Articles of serviceable quartermaster property may be sold by the Quartermaster General of the Army to officers of the Navy and Marine Corps, for their use in the public service, in the same manner as these articles are now sold to officers of the Army. *Act of Mar. 4, 1915 (38 Stat. 1079).*

588b. *Sale of subsistence stores to officers and enlisted men of Navy and Marine Corps.*—Hereafter the officers and enlisted men of the Navy and the Marine Corps shall be permitted to purchase subsistence supplies at the same price as is charged the officers and the enlisted men of the Army; and the officers and the enlisted men of the Army shall be permitted to purchase subsistence supplies from the Navy and Marine Corps at the same price as is charged the officers and the enlisted men of the Navy and Marine Corps. *Act of Aug. 29, 1916 (39 Stat. 630).*

611a. *Commutation of rations for enlisted men of Army and Militia at national rifle match.*—The sum of $12,000 is authorized to be expended for supplying meals or furnishing commutation of rations to enlisted men of the Regular Army and the Organized Militia who may be competitors in the national rifle match: *Provided further*, That no competitor shall be entitled to commutation of rations in excess of $1.50 per day, and when meals are furnished no greater expense than that sum per man per day for the period the contest is in progress shall be incurred. *Act of Mar. 4, 1915 (38 Stat. 1072).*

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611b. *Commutation of rations for cadets, enlisted men, members of Nurse Corps, etc., rates of.*—For payments: Of commutation of rations to the cadets of the United States Military Academy in lieu of the regular established ration, at the rate of 40 cents per ration; of the regulation allowances of commutation in lieu of rations to enlisted men on furlough, enlisted men and male and female nurses when stationed at places where rations in kind can not be economically issued, and when traveling on detached duty where it is impracticable to carry rations of any kind, enlisted men selected to contest for places or prizes in departments and Army rifle competitions while traveling to and from places of contest, male and female nurses on leaves of absence, applicants for enlistment, and general prisoners while traveling under orders; of commutation of rations in lieu of the regular established ration for members of the Nurse Corps (female) while on duty in hospital, 40 cents per ration, and for enlisted men, applicants for enlistment while held under observation, and general prisoners sick therein, at the rate of 30 cents per ration (except that at the general hospital at Fort Bayard, New Mexico, 50 cents per ration and at other general hospitals 40 cents per ration are authorized for enlisted patients therein), to be paid to the surgeon in charge. *Act of Aug. 29, 1916 (39 Stat. 630).*

616a. *Funds appropriated for support of Army available for purchase of reserve supplies.*—Hereafter funds appropriated for support of the Army may be used for the procurement of supplies to be held in store for issue to the Army during subsequent fiscal years. *Act of Mar. 4, 1915 (38 Stat. 1078).*

632a. *Appointment of Army pay clerk with certain service as first lieutenant, Quartermaster Corps.*—The President is authorized to appoint, and, by and with the advice and consent of the Senate, to commission to the grade of first lieutenant in the Quartermaster Corps, United States Army, a pay clerk of over thirty-one years' service, now in active service, and who has been recommended by the then Secretary of War for such appointment. *Act of Aug. 29, 1916 (39 Stat. 644).*

633a. *Certain clerks to be known as field clerks, Quartermaster Corps, to receive allowances of pay clerks, and to be subject to the Articles of War.*—Hereafter not to exceed two hundred clerks, Quartermaster Corps, who shall have had twelve years of service, at least three years of which shall have been on detached duty away from permanent stations, or on duty beyond the continental limits of the United States, or both, shall be known as field clerks, Quartermaster Corps, and shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war. *Id. 625.*

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651a. *Allowance of fuel, quarters, and forage.*—Fuel, quarters, and forage may be furnished in kind to officers by the Quartermaster's Department according to law and regulations: (*Provided, however,* That when forage in kind can not be furnished by the proper departments, then and in all such cases officers entitled to forage may commute the same according to existing regulations: *Provided further,* That officers of the Army and of Volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of Cavalry officers of the same grade, respectively.) *Sec. 1270, R. S.*

668a. *Commutation of quarters to officers, etc., where no public quarters are available.*—Hereafter, at places where there are no public quarters available, commutation for the authorized allowance therefor shall be paid to commissioned officers, acting dental surgeons, veterinarians, members of the Nurse Crops, and pay clerks at the rate of $12 per room per month; and, when specifically authorized by the Secretary of War, to enlisted men at the rate of $15 per month, or in lieu thereof he may, in his discretion, rent quarters for the use of said enlisted men when so on duty. *Act of March 4, 1915 (38 Stat. 1069).*

668b. *Same—Secretary of War may determine when and where public quarters are not available.*—Hereafter the Secretary of War may determine where and when there are no public quarters available within the meaning of this or any other act. *Id.*

668c. *Commutation of quarters, heat, and light for officers, etc.*—For commutation of quarters and of heat and light to commissioned officers, members of the Nurse Corps, and enlisted men on duty at places where no public quarters are available.[1] *Act of Aug. 29, 1916 (39 Stat. 628).*

673a. *Officers on duty as observers with foreign armies in field, expenses of.*—The actual and necessary expenses of officers of the Army who, after July first, nineteen hundred and fourteen, have been on duty abroad for the purpose of observing operations of armies of foreign States at war, and of officers who may hereafter be on duty abroad for that purpose, shall be paid out of the appropriation for contingencies of the military information section, General Staff Corps, upon certificates of the Secretary of War that the expenditures were necessary for obtaining military information. *Act of Mar. 4, 1915 (38 Stat. 1063).*

[1] *Held,* that in view of the fact that the appropriation limits the payment of commutation of quarters, heat, and light, to officers only when on duty at places where no public quarters are available, commutation of heat and light can not legally be paid to officers on duty in the field who are provided with tent quarters and who rent other quarters at their own expense. (*War. Dept. Bul. No. 47. Nov. 16, 1916*).

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675a. *Mileage to engineer officers.*—In determining the mileage of officers of the Corps of Engineers traveling without troops on duty connected with works under their charge, no deductions shall be made for such travel as may be necessary on free or bond-aided or land-grant railways. *Sec. 15, Act of Sept. 19, 1890 (26 Stat. 456).*

680a. *Subsistence expenses of officials—Allowances for, outside of District of Columbia limited.*—On and after July first, nineteen hundred and fourteen, unless otherwise expressly provided by law, no officer or employee of the United States shall be allowed or paid any sum in excess of expenses actually incurred for subsistence while traveling on duty outside of the District of Columbia and away from his designated post of duty, nor any sum for such expenses actually incurred in excess of $5 per day; nor shall any allowance or reimbursement for subsistence be paid to any officer or employee in any branch of the public service of the United States in the District of Columbia unless absent from his designated post of duty outside of the District of Columbia, and then only for the period of time actually engaged in the discharge of official duties. *Act of Apr. 6, 1914 (38 Stat. 318).*

689a. *Disbursement of certain appropriations heretofore made which shall constitute one fund.*—All the money hereinbefore appropriated under the titles Subsistence of the Army, Regular Supplies—Quartermaster Corps, Incidental Expenses—Quartermaster Corps Transportation of the Army and its Supplies, Water and Sewers at Military Posts, and Clothing and Camp and Garrison Equipage shall be disbursed and accounted for by officers and agents of the Quartermaster Corps as "Supplies, Services, and Transportation, Quartermaster Corps," and for that purpose shall constitute one fund. *Act of Mar. 4, 1915 (38 Stat. 1078).*

689b. *Same.*—All the money hereinbefore appropriated under the titles Subsistence of the Army; Regular supplies, Quartermaster Corps; Incidental expenses, Quartermaster Corps; Transportation of the Army and its supplies; Water and sewers at military posts, and Clothing and camp and garrison equipage, shall be disbursed and accounted for by officers and agents of the Quartermaster Corps as "Supplies, Services, and Transportation of Quartermaster Corps," and for that purpose shall constitute one fund.—*Act of Aug. 29, 1916 (39 Stat. 635).*

695a. *Pay of noncommissioned officers and enlisted men.*—Hereafter the monthly pay of enlisted men of certain grades of the Army created in this Act shall be as follows, namely: Quartermaster sergeant, senior grade, Quartermaster Corps; master hospital sergeant, Medical Department; master engineer, senior grade, Corps of Engineers; and band leader, Infantry, Cavalry, Artillery, and Corps of Engineers, $75; hospital sergeant, Medical Department; and master

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engineer, junior grade, Corps of Engineers, $65; sergeant, first class, Medical Department, $50; sergeant, first class, Corps of Engineers; regimental supply sergeant, Infantry, Cavalry, Field Artillery, and Corps of Engineers; battalion supply sergeant, Corps of Engineers; and assistant engineer, Coast Artillery Corps, $45; assistant band leader, Infantry, Cavalry, Artillery, and Corps of Engineers; and sergeant bugler, Infantry, Cavalry, Artillery, and Corps of Engineers, $40; musician, first class, Infantry, Cavalry, Artillery, and Corps of Engineers; supply sergeant, mess sergeant, and stable sergeant, Corps of Engineers; sergeant, Medical Department, $36; supply sergeant, Infantry, Cavalry, and Artillery; mess sergeant, Infantry, Cavalry, and Artillery; cook, Medical Department; horseshoer, Infantry, Cavalry, Artillery, Corps of Engineers, Signal Corps, and Medical Department; stable sergeant, Infantry and Cavalry; radio sergeant, Coast Artillery Corps; and musicians, second class, Infantry, Cavalry, Artillery, and Corps of Engineers, $30; musician, third class, Infantry, Cavalry, Artillery and Corps of Engineers; corporal, Medical Department, $24; saddler, Infantry, Cavalry, Field Artillery, Corps of Engineers, and Medical Department; mechanic, Infantry, Cavalry, and Field Artillery, and Medical Department; farrier, Medical Department; and wagoner, Infantry, Field Artillery, and Corps of Engineers, $21; private, first class, Infantry, Cavalry, Artillery, and Medical Department, $18; private, Medical Department, and bugler, $15.[1] *Sec. 28, Act of June 3, 1916 (39 Stat. 186).*

(See paragraph 702a for the ensuing provision of this section; see also paragraphs 697 and 698.)

701a. *Enlisted men prohibited from civil employment.*—Hereafter no enlisted man in the active service of the United States in the Army, Navy, and Marine Corps, respectively, whether a noncommissioned officer, musician, or private, shall be detailed, ordered, or

[1] *Held*, that by reason of the saving clause in section 28, that "nothing herein contained shall operate to reduce the pay or allowances now authorized by law for any grade of enlisted men of the Army," privates of the Medical Department transferred to that grade from the Medical Corps by operation of section 10 are entitled to be paid at the rate of $16 per month during the remainder of their current enlistment.

Held further, that the pay of men enlisting in the grade of private, Medical Department, on or after June 3, 1916, will be at the rate of $15 per month, and also that privates of other branches of the military service whose pay is $15 per month who are transferred to the grade of private, Medical Department, upon their own application or with their consent, will be paid upon the basis of the new rate of $15 per month.

Held, That the act of June 3, 1916, created the grade of mess sergeant for certain arms of the service only; that for other arms of the service mess sergeants must be provided as heretofore by detail; that the men holding the grade of mess sergeant under the new act are entitled only to the pay established for that grade, namely, $36 or $30 per month, according to the arm of the service in which serving, and that men detailed as mess sergeants in the arms of the service for which the grade of mess sergeant is not provided are entitled

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permitted to leave his post to engage in any pursuit, business, or performance in civil life, for emolument, hire, or otherwise, when the same shall interfere with the customary employment and regular engagement of local civilians in the respective arts, trades, or professions.[1] *Sec. 35, Id. 188.*

702a. *Act not to be construed as reducing pay or allowances of any enlisted man.*—Nothing herein contained shall operate to reduce the pay or allowances now authorized by law for any grade of enlisted men of the Army.[2] *Sec. 28, Id., 187.*

(For preceding provision of this section see par. 695a.)

704a. *Detail of enlisted men for recruiting duty.*—The Secretary of War is authorized to detach from the Army at large such number of enlisted men as may be necessary to perform duty at the various recruiting stations, and while performing such duty one member of each party shall have the rank, pay, and allowances of sergeant and one the rank, pay, and allowances of corporal of the arm of the service to which they respectively belong. *Sec. 31, act of Feb. 2, 1901 (31 Stat. 756).*

704b. *Temporary sergeants and corporals at recruiting depots.*—Hereafter the Secretary of War may authorize the temporary appointment of such number of sergeants and corporals in the com-

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to the pay of the grades actually held by them plus $6 per month, as provided in the act of May 11, 1908; and further, in answer to specific questions,

Held, That—

(*a*) The base or initial pay of the grade of mess sergeant, Corps of Engineers, is $36 per month, and no more.

(*b*) The base or initial pay of the grade of mess sergeant in the Infantry, Cavalry, and Artillery is $30 per month, and no more.

(*c*) The continuous-service pay of persons appointed to the grade of mess sergeant should be computed on the basis of the rates mentioned in the answers to questions (*a*) and (*b*).

(*d*) The arms of the service for which the act of June 3, 1916, makes provision for mess sergeants are not entitled to have additional mess sergeants assigned or detailed thereto. Such provision is complete as to such organizations. (Comptroller W. W. Warwick, June 30, 1916.) (War Dept. Bull. 18, July 8, 1916.)

[1] *Held*, That while an enlisted man on leave of absence or ordinary furlough is unquestionably to be deemed in active service within the meaning of this term as used in the statute mentioned, it would go beyond the primary purpose of the law to apply it to a case like this where the furlough has been granted to an enlisted man under authority of regulations to extend to the date of his retirement, it not being within the contemplation of the authorities granting the furlough that he will ever resume active duty, and that, therefore, in such cases the soldier may accept employment or engage in business without reference to the provisions of section 35 of the national defense act. (War Dept. Bull. 3, Jan. 19, 1917.)

[2] *Held*, That this provision relates to the pay of grades and not of individuals, and that demotion of individual soldiers, if found necessary to be made in order to comply with the law providing for a reduction in the members of grades in any particular line of the Army, is not a reduction of pay or allowances fixed by law for such grades, and hence would not be prohibited by this provision.

(Comp. Treas., July 19, 1916, War Dept. Bull. 28, Aug. 18, 1916.)

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panies at the general recruiting depots as may be necessary for the proper control and instruction of the varying number of recruits attached to such companies. *Act of Mar. 3, 1909 (35 Stat. 741).*

704c. *One enlisted man at each recruit depot to have rank, pay, and allowances of a regimental sergeant major.*—Hereafter one of the enlisted men detached from the Army at large for duty at each of the recruit depots under the provisions of the Act of June twelfth, nineteen hundred and six, shall, while so detached, have the rank, pay, and allowances of a regimental sergeant major. *Act of Aug. 29, 1916 (39 Stat. 624).*

721a. *Transportation of change of station allowance of baggage on discharge for disability of enlisted man having ten years or more of service.*—Hereafter when an enlisted man having ten or more years' service in the Army is discharged on account of disability incurred in the line of duty, transportation of his authorized change of station allowance of baggage from his last duty station to his home in addition to other travel allowances fixed by law may be authorized by the Secretary of War. *Id. 633.*

727a. *Pay and allowances of soldier sentenced to dishonorable discharge during execution of suspended sentence.*—Hereafter pay and allowances shall not accrue to a soldier under sentence of dishonorable discharge during such period as the execution of the sentence of discharge may be suspended under authority of the act of Congress approved April twenty-seventh, nineteen hundred and fourteen, and pay which has heretofore been forfeited under such suspended sentence shall not be held to have accrued to the Soldiers' Home under the operation of section forty-eight hundred and eighteen, Revised Statutes, but shall be covered back into the Treasury of the United States. *Act of Mar. 4, 1915 (38 Stat. 1065).*

(This provision will also be found under paragraph 1507a.)

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CHAPTER XIX.

THE MEDICAL DEPARTMENT.

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728a. *The Medical Department, composition of.*—The Medical Department shall consist of one Surgeon General, with the rank of major general during the active service of the present incumbent of that office, and thereafter with the rank of brigadier general, who shall be chief of said department, a Medical Corps, a Medical Reserve Corps within the limit of time fixed by this Act, a Dental Corps, a Veterinary Corps, an enlisted force, the Nurse Corps and contract surgeons as now authorized by law, the commissioned officers of which shall be citizens of the United States. *Sec. 10, Act of June 3, 1916 (39 Stat. 171).*

(For the next provision of this section see par. 729a. For the provision of sec. 37 abolishing the Medical Reserve Corps one year after passage of act, see par. 1539.)

728b. *Not to exceed five officers of, may be detailed with American Red Cross.*—Hereafter the President shall be authorized to detail not to exceed five officers of the Medical Department of the Army for duty with the military relief division of the American National Red Cross. *Id.*

(For other provisions of this section, preceding this paragraph, see pars. 729a, 729b, 729c, 731a, and 732a.)

VETERINARY CORPS.

728c. *Composition of.*—The President is hereby authorized, by and with the advice and consent of the Senate, to appoint veterinarians

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and assistant veterinarians in the Army, not to exceed, including veterinarians now in service, two such officers for each regiment of Cavalry, one for every three batteries of Field Artillery, one for each mounted battalion of Engineers, seventeen as inspectors of horses and mules and as veterinarians in the Quartermaster Corps, and seven as inspectors of meats for the Quartermaster Corps; and said veterinarians and assistant veterinarians shall be citizens of the United States and shall constitute the Veterinary Corps and shall be a part of the Medical Department of the Army. *Sec. 16, act of June 3, 1916 (39 Stat. 176).*

(See pars. 544, 1078, and 1079 for existing law relative to veterinarians.)

728d. *Appointment of assistant veterinarian, qualifications and examination for.*—Hereafter a candidate for appointment as assistant veterinarian must be a citizen of the United States, between the ages of twenty-one and twenty-seven years, a graduate of a recognized veterinary college or university, and shall not be appointed until he shall have passed a satisfactory examination as to character, physical condition, general education, and professional qualifications. *Id.*

728e. *Same—Rank, pay, and allowances of.*—An assistant veterinarian appointed under this Act shall, for the first five years of service as such, have the rank, pay, and allowances of second lieutenant; that after five years of service he shall have the rank, pay, and allowances of first lieutenant; that after fifteen years of service he shall be promoted to be a veterinarian with the rank, pay, and allowances of captain, and that after twenty years' service he shall have the rank, pay, and allowances of a major. *Id.*

728f. *Same—Examination for promotion.*—Any assistant veterinarian, in order to be promoted as hereinbefore provided, must first pass a satisfactory examination, under such rules as the President may prescribe, as to professional qualifications and adaptability for the military service; and if such assistant veterinarian shall be found deficient at such examination he shall be discharged from the Army with one year's pay. *Id.*

728g. *Veterinarians now in Army appointed in Veterinary Corps, rank and pay of.*—The veterinarians of Cavalry and Field Artillery now in the Army, together with such veterinarians of the Quartermaster Corps as are now employed in said corps, who at the date of the approval of this Act shall have had less than five years' governmental service, may be appointed in the Veterinary Corps as assistant veterinarians with the rank, pay, and allowances of second lieutenant; those who shall have had over five years of such service may be appointed in said corps as assistant veterinarians with the rank, pay, and allowances of first liutenant; and those who shall have had over fifteen years of such service may be appointed in said corps as

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veterinarians with the rank, pay, and allowances of captain.[1] *Id. 177.*

(See par. 544, 1078, and 1079 for existing law relative to veterinarians.)

728h. *Same—Examination for.*—No such appointment of any veterinarian shall be made unless he shall first pass satisfactorily a practical professional and physical examination as to his fitness for the military service.[2] *Id.*

728i. *Same—Retirement of if found physically disqualified.*—Veterinarians now in the Army or in the employ of the Quartermaster Corps who shall fail to pass the prescribed physical examination because of disability incident to the service and sufficient to prevent them from the performance of duty valuable to the Government shall be placed upon the retired list of the Army with seventy-five per centum of the pay to which they would have been entitled if appointed in the Veterinary Corps as hereinbefore prescribed. *Id.*

728j. *Appointment of reserve veterinarians, pay and allowances of.*—The Secretary of War, upon recommendation of the Surgeon General of the Army, may appoint in the Veterinary Corps, for such time as their services may be required, such number of reserve veterinarians as may be necessary to attend public animals pertaining to the Quartermaster Corps. Reserve veterinarians so employed shall have the pay and allowances of second lieutenant during such employment and no longer. *Id.*

728k. *Same—Qualifications of; eligible for appointment as assistant veterinarian.*—Such reserve veterinarians shall be graduates of a recognized veterinary college or university and shall pass a satisfactory examination as to character, physical condition, general education, and professional qualifications in like manner as hereinbefore required of assistant veterinarians; such reserve veterinarians shall constitute a list of eligibles for appointment as assistant veterinarians, subject to all the conditions hereinbefore prescribed for the appointment of assistant veterinarians. *Id.*

728l. *Probationary appointment of assistant veterinarians from eligible list in order of merit.*—Within a limit of time to be fixed by the Secretary of War, candidates for appointment as assistant veterinarians who shall have passed satisfactorily the examinations prescribed for that grade by this Act shall be appointed, in the order

[1] *Held*, that those persons employed as inspectors of horses and as inspectors of meats, who are qualified veterinarians, come within such authorization and may be commissioned in the Veterinary Corps with rank, pay, and allowances as specified in the act. (War Dept. Bull. 34, Sept. 12, 1916.)

[2] *Held*, that as the act limits the character of the examination to a practical professional and physical examination, it excludes a theoretical examination, and the examination required must be confined to such inquiry as will determine the ability of the applicant skillfully to perform his profession, but may include a written examination on questions of a practical nature. (War Dept. Bull. 28, Aug. 18. 1916.)

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of merit in which they shall have passed such examination, to vacancies as they occur, such appointments to be for a probationary period of two years, after which time, if the services of the probationers shall have been satisfactory, they shall be permanently appointed with rank to date from the dates of rank of their probationary appointments. *Id.*

728m. *Same—Discharge of probationary veterinarians whose services are unsatisfactory.*—Probationary veterinarians whose services are found unsatisfactory shall be discharged at any time during the probationary period, or at the end thereof, and shall have no further claims against the Government on account of their probationary service. *Id.*

728n. *Boards of examiners, composition of.*—The Secretary of War shall from time to time appoint boards of examiners to conduct the veterinary examinations hereinbefore prescribed, each of said boards to consist of three medical officers and two veterinarians.[1] *Id.*

THE MEDICAL CORPS.[2]

729a. *Composition of.*—The Medical Corps shall consist of commissioned officers below the grade of brigadier general, proportionally distributed among the several grades as in the Medical Corps now established by law. The total number of such officers shall approximately be equal to, but not exceed, except as hereinafter provided, seven for every one thousand of the total enlisted strength of the Regular Army authorized from time to time by law.[3] *Sec. 10, id. 171.*

(For provision of this section preceding this paragraph, see paragraph 728a.)

729b. *Upon reduction by law of authorized enlisted strength of Army no original appointments to be made to commissioned rank in until it has been proportionally reduced.*—If by reason of a reduction by law in the authorized enlisted strength of the Army aforesaid the total number of officers in the Medical Corps commissioned previously to such reduction shall for the time being exceed the equivalent

[1] *Held*, that as the law does not specifically require the veterinarian members of the board to have qualified under the examination provided by the national-defense act, and it would be impossible so to constitute the first board the existing veterinarians in the service should be appointed members of the first boards convened for the required examinations. (War Dept. Bull. 18, July 6, 1916.)

[2] For requirement that commissioned officers of the Medical Corps shall be citizens of the United States, see par. 723a, ante.

[3] *Held*, that the prescribed ratio of seven officers to each one thousand enlisted men for the Medical Corps did not become effective with the passage of the act of June 3, 1916, but that the total authorized increase of officers in said corps, to be determined according to the total authorized enlisted strength, including all increments, is subject to the provision in section 24 requiring the increases to be made in five approximately equal increments. (War Dept. Bull. 34, Sept. 12, 1916.)

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of seven to one thousand of such reduced enlisted strength, no original appointment to commissioned rank in said corps shall be made until the total number of commissioned officers thereof shall have been reduced below the equivalent of seven to the thousand of the said reduced enlisted strength, nor thereafter so as to make the total number of commissioned officers thereof in excess of the equivalent of seven to the thousand of said reduced enlisted strength; and no promotion shall be made above the grade of captain in said corps until the number of officers in the grade above that of captain to which the promotion is due shall have been reduced below the proportional number authorized for such grade on the basis of the reduced enlisted strength, nor thereafter so as to make the number of officers in such grade in excess of the proportional number authorized on the basis of said reduced enlisted strength. *Id.*

729c. *Medical officers appointed to meet increase in time of war to be honorably discharged when strength of Army is reduced.*—When in time of war the Regular Army shall have been increased by virtue of the provisions of this or any other Act, the medical officers appointed to meet such increase shall be honorably discharged from the service of the United States when the reduction of the enlisted strength of the Army shall take place. *Id.*

(For the next provision of this section see paragraph 732a.)

731a. *Relative rank of captains, method of determining.*—Relative rank among captains in the Medical Corps, who have or shall have attained that rank by operation of law after a period of service fixed thereby, shall be determined by counting all the service rendered by them as officers in said corps and as assistant surgeons in the Regular Army, subject, however, to loss of files by reason of sentence of court-martial or by reason of failure to pass examination for promotion. *Id.*

(For the next preceding provision of this section see paragraph 732a.)

732a. *Appointment in, qualifications for, and promotion.*—Persons hereafter commissioned in the Medical Corps shall be citizens of the United States between the ages of twenty-two and thirty years and shall be promoted to the grade of captain upon the completion of five years' service in the Medical Corps and upon passing the examinations prescribed by the President for promotion to the grade of captain in the Medical Corps.[1] *Id.*

(For the next ensuing provision of this section see paragraph 728b.)

[1] Under existing law there are two courses of action prescribed in respect to medical officers who fail to qualify for promotion for reasons other than physical disability incurred in line of duty—the act of April 23, 1908 (35 Stat. 67), which applies to captains and lieutenants, providing that upon their failure to pass the examination the finding of the examining board shall be passed upon by a board of review, and if it be concurred in by the board of review the officer shall be discharged with one year's pay; the other, the act of March 3,

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732b. *Same—Provision as to age limit repealed.*—So much of the Act of June third, nineteen hundred and sixteen, as relates to the age limit for eligibility to appointment of first lieutenants in the Medical Department of the Army, be, and the same is hereby, repealed. *Act of Aug. 29, 1916 (39 Stat. 640).*

732c. *Same—Age limit after January first, nineteen hundred and eighteen.*—After January first, nineteen hundred and eighteen, the maximum age limit for eligibility to appointment of first lieutenants in the Medical Department of the Army shall be thirty-two years. *Id.*

DENTAL SURGEONS.

750a. *Rank, pay, allowances, qualifications, and number of.*—The President is hereby authorized to appoint and commission, by and with the advice and consent of the Senate, dental surgeons, who are citizens of the United States between the ages of twenty-one and twenty-seven years, at the rate of one for each one thousand enlisted men of the line of the Army. Dental surgeons shall have the rank, pay, and allowances of first lieutenants until they have completed eight years' service. Dental surgeons of more than eight but less than twenty-four years' service shall, subject to such examination as the President may prescribe, have the rank, pay, and allowances of captains. Dental surgeons of more than twenty-four years' service shall, subject to such examination as the President may prescribe, have the rank, pay, and allowances of major.[2] *Sec. 10, Act of June 3, 1916 (39 Stat. 173).*

(For provisions of this section preceding this paragraph see paragraphs 728a, 729a, 729b, 729c, 732a, 731a, 728b, 756a, 760a, 766a, 756b, 766c, 766d, 766e, 766f, 766g, 765a, 765b.)

1909 (35 Stat. 737), which applies in terms to majors, and provides that if such officer fails to pass an examination for promotion, for reasons other than physical disability incurred in line of duty, he shall be suspended from promotion and reexamined after the expiration of one year, and if he then fails to pass he shall be retired without promotion.

Held, that by the above-quoted provision of the national defense act the provisions of the act of March 3, 1909, *supra*, relating to examination of majors of the Medical Corps and the action to be taken in case of failure to qualify for promotion, is extended to include promotions of officers of the Medical Corps above the grade of major and below the grade of brigadier general. (War Dept. Bull. 18, July 8, 1916.)

[2] *Held*, that the provision quoted from the act of 1911 was not repealed by the national defense act, and that the two provisions should be read together; that the term "years' service" as used in the act of June 3, 1916, includes service under contract as well as service under commission, and is limited to service as a dental surgeon under contract or commission; and that therefore, in computing under said law the length of service of dental surgeons, for promotion and other purposes, all such dental surgeons as are otherwise eligible and have service as contract dental surgeons or acting dental surgeons prior to June 3, 1916, shall be given credit for the length of their service as such contract dental surgeons or acting dental surgeons, in addition to credit for service as first lieutenant under the act of Mar. 3, 1911.

(Comp. Treas., July 22, 1916. War Dept. Bull. 28, Aug. 18, 1916.)

Held, that this provision for advancement does not contemplate that it shall be by way of a new appointment and commission, as only the one office, that of

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750b. *Same—Number of majors limited to fifteen.*—The total number of dental surgeons with rank, pay, and allowances of major shall not at any time exceed fifteen. *Id.*

750c. *Same—Examination for promotion same as for officers of Medical Corps.*—All laws relating to the examination of officers of the Medical Corps for promotion shall be applicable to dental surgeons. *Id.*

(For the last provision of this section see paragraph 1279a.)

ENLISTED FORCE.

756a. *Composition of.*—The enlisted force of the Medical Department shall consist of the following personnel, who shall not be included in the effective strength of the Army nor counted as a part of the enlisted force provided by law: Master hospital sergeants, hospital sergeants, sergeants (first class), sergeants, corporals, cooks, horseshoers, saddlers, farriers, mechanics, privates (first class), and privates. *Id. 172.*

(For provision of this section immediately preceding this paragraph see paragraph 728b. For authorization for one thousand additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property; and the similar detail of one hundred additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

756b. *Enlisted men in Hospital Corps at date of approval of Act transferred to corresponding grades in Medical Department.*—The enlisted men of the Hospital Corps who are in active service at the time of the approval of this Act are hereby transferred to the corresponding grades of the Medical Department established by this Act.[1] *Id.*

(For provisions of this section immediately preceding this paragraph see paragraphs 760a and 766a.)

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dental surgeon, is created, and that increases in rank, pay and allowances come by operation of law and depend exclusively upon length of service and the passing of required examinations.

Held further, that dental surgeons are entitled to the benefits of section 32 of the act of Feb. 2, 1901 (31 Stat. 756), providing that:

"When the exigencies of the service of any officer who would be entitled to promotion upon examination require him to remain absent from any place where an examining board could be convened, the President is hereby authorized to promote such officer, subject to examination, and the examination shall take place as soon thereafter as practicable." (War Dept. Bull. 47, Nov. 16, 1916.)

[1] *Held*, that the saving clause at the end of section 28, national-defense Act, operates to continue the pay of the grade of private, Hospital Corps, for the benefit of enlisted men during the remainder of their enlistments existing June 3, 1916, and that therefore the soldier, upon his reduction to the grade of private, was entitled to the old rate of $16 per month. (War Dept. Bull. 57, Dec. 22, 1916.)

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760a. *Appointment and qualifications of master hospital sergeants.*—Master hospital sergeants shall be appointed by the Secretary of War, but no person shall be appointed master hospital sergeant until he shall have passed a satisfactory examination under such regulations as the Secretary of War may prescribe before a board of one or more medical officers as to his qualifications for the position, including knowledge of pharmacy, and demonstrated his fitness therefor by service of not less than twelve months as hospital sergeant or sergeant, first class, Medical Department, or as sergeant, first class, in the Hospital Corps now established by law; and no person shall be designated for such examination except by written authority of the Surgeon General. *Id.*

(For provision of this section immediately preceding this paragraph see paragraph 756a.)

765a. *Privates, first class, eligible for ratings for additional pay as nurses and dispensary or surgical assistants.*—Privates, first class, of the Medical Department shall be eligible for ratings for additional pay as follows: As dispensary assistant, $2 a month; as nurse, $3 a month; as surgical assistant, $5 a month. *Id.*

(For the provisions of this section immediately preceding this paragraph see paragraphs 766a, 756b, 766b, 766c, 766d, 766e, 766f, and 766g.)

765b. *Same—No man shall receive more than one rating for additional pay.*—No enlisted man shall receive more than one rating for additional pay under the provisions of this section, nor shall any enlisted man receive any additional pay under such rating unless he shall have actually performed the duties for which he shall be rated. *Id. 173.*

766a. *Original enlistments to be in grade of private and reenlistments, transfers, etc., to be under prescribed regulations.*—Original enlistments for the Medical Department shall be made in the grade of private, and reenlistments and promotions of enlisted men therein, except as hereinbefore prescribed, and transfers thereto from the enlisted force of the line or other staff departments and corps of the Army shall be governed by such regulations as the Secretary of War may prescribe. *Id. 172.*

(For provision of this section immediately preceding this paragraph, see par. 760a.)

766b. *Enlisted men, total number not to exceed five per centum of enlisted strength of Army.*—The total number of enlisted men in the Medical Department shall be approximately equal to, but not exceed, except as hereinafter provided, the equivalent of five per centum of the total enlisted strength of the Army authorized from time to time by law. *Id.*

(For provision of this section immediately preceding this paragraph, see par. 756b.)

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766c. *Same—Additional men may be enlisted in time of actual or threatened hostilities.*—In time of actual or threatened hostilities, the Secretary of War is hereby authorized to enlist or cause to be enlisted in the Medical Department such additional number of men as the service may require. *Id.*

766d. *Number of master hospital sergeants, hospital sergeants, sergeants (first-class), sergeants, corporals, and cooks.*—The number of enlisted men in each of the several grades designated below shall not exceed, except as hereinafter provided, the following percentages of the total authorized enlisted strength of the Medical Department, to wit: Master hospital sergeants, one-half of one per centum; hospital sergeants, one-half of one per centum; sergeants, first class, seven per centum; sergeants, eleven per centum; corporals, five per centum; and cooks, six per centum. *Id.*

766e. *Number of horseshoers, saddlers, farriers, and mechanics.*—The number of horseshoers, saddlers, farriers, and mechanics in the Medical Department shall not exceed one each to each authorized ambulance company or like organization. *Id.*

766f. *Number of first-class privates and privates.*—In said department the number of privates, first class, shall not exceed twenty-five per centum of the number of privates. *Id.*

766g. *Upon reduction by law of authorized enlisted strength of Army no promotion of noncommissioned officers will be made until their percentage has been reduced proportionally.*—If by reason of a reduction by operation of law in the authorized enlisted strength of the Army aforesaid the number of noncommissioned officers of any grade in the Medical Department whose warrants were issued previously to such reduction shall for the time being exceed the percentage hereinabove specified for such grade, no promotion to such grade shall be made until the percentage of noncommissioned officers therein shall have been reduced below that authorized for such grade on the basis of the said reduced enlisted strength, nor thereafter so as to make the percentage of noncommissioned officers therein in excess of the percentage authorized on the basis of the said reduced enlisted strength; but noncommissioned officers may be reenlisted in the grades held by them previously to such reduction regardless of the percentages aforesaid; and when under this provision the number of noncommissioned officers of any grade exceeds the percentage specified, any noncommissioned officer thereof, not under charges, may be discharged on his own application. *Id.*

770a. *Allowances of superintendent.*—Hereafter the superintendent shall receive such allowances of quarters, subsistence, and medical care during illness as may be prescribed in regulations by the Secretary of War. *Act of Aug. 29, 1916 (39 Stat. 626).*

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775a. *Sale of medical supplies to American Red Cross.*—Hereafter, with the approval of the Secretary of War and at rates of charge of not less than the contract prices paid therefor plus twenty-five per centum to cover the cost of purchase, inspection, and so forth, the Medical Department of the Army may sell for cash to the American National Red Cross such medical supplies and equipments as can be spared without detriment to the military service. *Act of Mar 4, 1915 (38 Stat. 1080).*

775b. *Loan of sanitary equipment of Army and Navy to American Red Cross.*—The Secretary of War and the Secretary of the Navy be, and are hereby, authorized to issue, each at his discretion and under proper regulations to be prescribed by him, out of equipment for medical and other establishments on hand, belonging to the Government and which can be temporarily spared, such articles as may appear to be required for instruction and practice by organizations formed by the American National Red Cross, for the purpose of rendering aid to the Army and Navy in war. *Joint resolution No. 15, May 8, 1914 (38 Stat. 771).*

775c. *Same—Return to be provided for, and bond to be required.*—The regulations prescribed by the Secretary of War or by the Secretary of the Navy, in pursuance of the authority granted by section one, shall provide for the immediate return of the articles of equipment loaned the American National Red Cross when called for by the authority which issued them; and the said Secretaries shall require a bond in each case, in double the value of the property, for the care and safe-keeping thereof and for the return of the same when required. *Sec. 2, id.*

775d. *Same—Extended for instruction of persons who may volunteer for training within certain period.*—The provisions of section one of the joint resolution approved May eighth, nineteen hundred and fourteen, authorizing the issue of military and naval equipment to the American National Red Cross be, and they are hereby, so extended as to permit the issue of the same to the American National Red Cross for the instruction of persons who may volunteer to receive training by that association from May first to June first, nineteen hundred and sixteen. *Joint resolution No. —, May 18, 1916 (39 Stat. 164).*

775e. *Sales of medical supplies to civilian employees.*—Hereafter civilian employees of the Army stationed at military posts may, under regulations to be made by the Secretary of War, purchase necessary medical supplies when prescribed by a medical officer of the Army. *Act of Apr. 23, 1904 (33 Stat. 273).*

775f. *Proceeds of sales of medical and hospital supplies, disposition of.*—Hereafter all moneys arising from dispositions of service-

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able medical and hospital supplies authorized by law and regulation shall constitute one fund on the books of the Treasury Department, which shall be available to replace medical and hospital supplies throughout the fiscal year in which the dispositions were effected and throughout the following fiscal year. *Act of June 12, 1906 (34 Stat. 256).*

775g. *Settlement of accounts between other bureaus of War Department, etc., and Medical Department.*—Hereafter in the settlement of accounts between the appropriations of the Medical Department and those of any other branch of the Army service, or any bureau or office of the War Department, or any other executive department or establishment of the Government, payment thereof may be made by the proper disbursing officer of the Medical Department or of the branch of the Army service, office, bureau, department, or establishment concerned. *Act of Mar. 4, 1915 (38 Stat. 1080).*

776a. *Hospital care Canal Zone garrison; rate of commutation of rations and appropriation from which payable.*—For paying the Panama Canal such reasonable charges, exclusive of subsistence, as may be approved by the Secretary of War for caring in its hospitals for officers, enlisted men, military prisoners, and civilian employees of the Army admitted thereto upon the request of proper military authority: *Provided*, That the subsistence of the said patients, except commissioned officers and acting dental surgeons, shall be paid to said hospitals out of the appropriation for subsistence of the Army at the rates provided therein for commutation of rations for enlisted patients in general hospitals. *Act of Mar. 4, 1915 (38 Stat. 1080).*

(For similar provision in deficiencies Act, see Act of Mar. 4, 1915, 38 Stat. 114.4).

776b. *Same.*—For paying the Panama Canal such reasonable charges, exclusive of subsistence, as may be approved by the Secretary of War for caring in its hospitals for officers, enlisted men, military prisoners, and civilian employees of the Army admitted thereto upon the request of proper military authority: *Provided*, That the subsistence of the said patients, except commissioned officers and acting dental surgeons, shall be paid to said hospitals out of the appropriation for subsistence of the Army at the rates provided therein for commutation of rations for enlisted patients in general hospitals. *Act of Aug. 29, 1916 (39 Stat. 640).*

783a. *Application for trusses.*—Application for such truss shall be made by the ruptured soldier to an examining surgeon for pensions, whose duty it shall be to examine the applicant, and when found to have a rupture or hernia to prepare and forward to the Surgeon General an application for such truss without charge to the soldier. *See 1117, R. S.*

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783b. *Purchase of trusses.*—The Surgeon General is authorized and directed to purchase the trusses required for such soldiers at wholesale prices, and the cost of the same shall be paid upon the requisition of the Surgeon General out of any moneys in the Treasury not otherwise appropriated. *See 1178 R. S.*

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CHAPTER XX.

THE CORPS OF ENGINEERS.

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784a. *Composition of.*—The Corps of Engineers shall consist of one Chief of Engineers, with the rank of brigadier general; twenty-three colonels; thirty lieutenant colonels; seventy-two majors; one hundred and fifty-two captains; one hundred and forty-eight first lieutenants; seventy-nine second lieutenants; and the enlisted men hereinafter enumerated. The Engineer troops of the Corps of Engineers shall consist of one band, seven regiments, and two mounted battalions. *Sec. 11, Act of June 3, 1916 (39 Stat. 173).*

(For authorization for 1,000 additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property, and the similar detail of 100 additional sergeants with the disciplinary organizations at the United States disciplinary barracks, see paragraph 1332a.)

786a. *Vacancies, appointment to, under existing law; officers of Army or Navy may become candidates for appointment to, without vacating their commissions.*—Appointments to the grade of second lieutenant in the Corps of Engineers, including those created by this Act, shall continue to be made as now provided by law, but that

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officers of the Army or Navy of the United States may become candidates for said appointments under the provisions of section five of the Act of Congress approved February twenty-seventh, nineteen hundred and eleven,[1] without previously vacating their commissions as officers, and that the Secretary of War may, in his discretion, allow persons to become candidates without previously establishing eligibility for appointment as junior engineer under the Engineer Bureau of the War Department. *Sec. 24, Id. 183.*

(For the provisions of this section preceding this paragraph, see paragraphs 331b, 331c, 331d, 331e, and 331f, and for the provision immediately following, see paragraph 331g.)

790a. *Regimental organization.*—Each regiment of Engineers shall consist of one colonel; one lieutenant colonel; two majors; eleven captains; twelve first lieutenents; six second lieutenants; two master engineers, senior grade; one regimental sergeant major; two regimental supply sergeants; two color sergeants; one sergeant bugler; one cook; one wagoner for each authorized wagon of the field and combat train, and two battalions. *Sec. 11, Id. 172.*

(For preceding provision of this section see paragraph 784a.)

790b. *Battalion and company organizations.*—Each battalion of a regiment of Engineers shall consist of one major; one captain; one battalion sergeant major; three master engineers, junior grade; and three companies. Each Engineer company (regimental) shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; three sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; six sergeants; twelve corporals; one horseshoer; two buglers; one saddler; two cooks; nineteen privates, first class; and fifty-nine privates. *Id.*

790c. *Same—President may increase regimental, battalion, and company organizations.*—The President may, in his discretion, increase a regiment of Engineers by two master engineers, senior grade, and two sergeants; each battalion of a regiment of Engineers by three master engineers, junior grade; and each Engineer company (regimental) by two sergeants, six corporals, one cook, twelve privates, first class, and thirty-four privates. *Id.*

(For the ensuing provision of this section see paragraph 792a.)

790d. *Same—Battalion and company organizations of mounted Engineers.*—Each battalion of mounted Engineers shall consist of one major; five captains; seven first lieutenants; three second lieutenants; one master engineer, senior grade; one battalion sergeant major; one battalion supply sergeant; three master engineers, junior grade; one corporal; one wagoner for each authorized wagon of the field and

[1] See par. 785, ante.

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combat train; and three mounted companies. Each mounted Engineer company shall consist of one captain; two first lieutenants; one second lieutenant; one first sergeant; two sergeants, first class; one mess sergeant; one supply sergeant; one stable sergeant; four sergeants; eight corporals; two horseshoers; one saddler; two cooks; two buglers; twelve privates, first class; and thirty-seven privates. *Id. 174.*

(For the provision of this section immediately preceding this paragraph see paragraph 792a.)

790e. *Same—President may increase battalion and company organizations of mounted Engineers.*—The President may, in his discretion, increase the battalions of mounted Engineers by one master engineer, senior grade; two sergeants; and three master engineers, junior grade; and a mounted Engineer company by two sergeants; three corporals; eight privates, first class; and twenty-four privates. *Id.*

790f. *Detail of officers from Corps of Engineers for command of regiments, battalions, and companies.*—Appropriate officers to command the regiments, battalions, and companies herein authorized and for duty with and as staff officers of such organizations shall be detailed from the Corps of Engineers, and shall not be in excess of the numbers in each grade enumerated in this section. *Id.*

791a. *Part of line of Army.*—The enlisted force of the Corps of Engineers and the officers serving therewith shall constitute a part of the line of the Army. *Id.*

792a. *Band, composition of.*—The Engineer band shall consist of one band leader; one assistant band leader; one first sergeant; two band sergeants; four band corporals; two musicians, first class; four musicians, second class; thirteen musicians, third class; and two cooks. *Id.*

(For provisions of this section preceding this paragraph, see paragraphs 784a, 790a, 790b, and 790c, and for the provisions following it see paragraphs 790d, 790e, 790f, and 791a.)

808a. *Per diem rate of $4 per day in lieu of subsistence for persons traveling outside District of Columbia, etc., whose expenses are chargeable to Army appropriation Act.*—Where the expenses of persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty are chargeable to appropriations of the Engineer Department contained in the Army appropriation Act for the fiscal year nineteen hundred and seventeen, a per diem rate of $4 may be allowed in lieu of subsistence. *Act of Aug. 29, 1916 (39 Stat. 642).*

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CHAPTER XXI.

THE ORDNANCE DEPARTMENT—ARMORIES AND ARSENALS—BOARD OF ORDNANCE AND FORTIFICATION.

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THE ORDNANCE DEPARTMENT.

809a. *Composition of.*—The Ordnance Department shall consist of one Chief of Ordnance, with the rank of brigadier general; ten colonels; fifteen lieutenant colonels; thirty-two majors; forty-two captains; forty-two first lieutenants; the ordnance sergeants, as now authorized by law, and such other enlisted men of grades now authorized by law as the President may direct.—*Sec. 12, Act of June 3, 1916 (39 Stat. 174).*

(For the ensuing provision of this section see paragraph 820a.)

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812a. *Details.*—Vacancies which may occur in the commissioned personnel of the Ordnance Department shall be subject to the provisions of sections twenty-six and twenty-seven of the Act approved February second, nineteen hundred and one, the Acts approved June twenty-fifth, nineteen hundred and six, and February twenty-fourth, nineteen hundred and fifteen, and Acts amendatory thereof relating to the Ordnance Department. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 820a, and for the ensuing provision of the section see paragraph 813b.)

813a. *Detail of majors for duty in.*—Majors may be detailed in the Ordnance Department, under section twenty-six of the Act approved February second, nineteen hundred and one, and Acts amendatory thereof,[1] without a compulsory period of service out of that department. *Act of Feb. 24, 1915 (38 Stat. 812).*

813b. *Detail of not to exceed thirty student officers in establishments of the Ordnance Department.*—Hereafter the Secretary of War is authorized to detail not to exceed thirty lieutenants from the Army at large for duty as student officers in the establishments of the Ordnance Department for a period of two years; and the completion of the prescribed course of instruction shall constitute the examination for detail in the Ordnance Department. *Sec. 12, Act of June 3, 1916 (39 Stat. 174).*

(For provisions of this section preceding this paragraph see paragraphs 809a, 820a, and 812a.)

820a. *Ordnance sergeants, qualifications and appointment.*—Ordnance sergeants shall be selected by the Secretary of War from the sergeants of the line or Ordnance Department who shall have served faithfully for eight years, including four years in the grade of noncommissioner officer. *Id.*

(For the provision of this section preceding this paragraph see paragraph 809a, and for ensuing provision see paragraph 812a.)

822a. *Chief of Ordnance member of commission on manufacture of Government articles by prisoners at United States penitentiaries.*—There is created a commission, to be composed of the Chief of Ordnance of the United States Army, the Chief of Ordnance of the United States Navy, the superintendent of prisons of the Department of Justice, and the purchasing agent of the Post Office Department, who shall serve without additional compensation and who shall report to Congress not later than the first Monday in December, nineteen hundred and sixteen, detailed estimates and plans for equipping the United States penitentiaries for the manufacture, by the prisoners, of various articles used by the Government. Such report shall indicate what articles it is thought desirable to be so

[1] See pars. 373–385, ante.

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manufactured; the cost of equipping existing buildings and the erection and equipping of any other necessary buildings; the probable cost of manufacture of such articles and the price now paid under contract; and such other data as may be pertinent to the general inquiry. For expenses of the commission, to be paid on vouchers to be approved by the chairman, who shall be selected by the members thereof, $5,000. *Act of Sept. 8, 1916 (39 Stat. 819).*

825a. *Public quarters—Occupancy by ordnance officer of brick house at proving ground not occupancy of.*—Hereafter the occupancy by such officers, providing themselves with quarters elsewhere, of one room in the building at the proving ground locally known as the brick house, shall not be construed as occupancy of public quarters within the meaning of this Act and of the law authorizing allowance and commutation of quarters. *Act of Mar. 3, 1915 (38 Stat. 889).*

825b. *Same—Per diem expenses of officers not occupying.*—For necessary expenses of officers not occupying public quarters at the proving ground while employed on ordnance duty thereat, at the rate of $2.50 per diem while so employed. *Id.*

831a. *Ammunition, etc., for small-arms target practice, instruction of civilians, etc.*—For manufacture and purchase of ammunition, targets, and other accessories for small-arms, hand, and machine-gun target practice and instruction; marksmen's medals, prize arms, and insignia for all arms of the service; and ammunition, targets, target materials, and other accessories may be issued for small-arms target practice and instruction of able-bodied males capable of bearing arms and at the educational institutions and State soldiers' and sailors' orphans' homes to which issues of small arms are lawfully made, under such regulations as the Secretary of War may prescribe, provided the total value of the stores so issued to the educational institutions and homes does not exceed $30,000, $3,000,000.

Provided, That not more than $1,500,000 of this appropriation may be used for the purchase of articles not manufactured by the Government and necessary for small-arms target practice. *Act of Aug. 29, 1916 (39 Stat., 643).*

844a. *Sale of ordnance and ordnance stores to Government of Cuba.*—The Secretary of War is hereby authorized to sell, at the prices fixed and published by the Chief of Ordnance, to the Government of Cuba such articles and quantities of ordnance and ordnance stores as may be desired by that Government for the equipment of its troops and as may be approved by the President of the United States *Id.*

849a. *Condemned cannon, etc., donated to patriotic organizations, etc., Government not to transport, and to remain subject to orders of Secretary of War.*—No expense shall be incurred by the United

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States through the delivery of any of the foregoing condemned military equipment: *And provided further*, That each and every article of condemned military equipment covered by this Act shall be subject at all time to the order of the Secretary of War. *Act of Mar. 4, 1915 (38 Stat. 1212)*.

849b. *Same.*—No expense shall be incurred by the United States through the delivery of any of the foregoing condemned military equipment: *Provided further*, That each and every article of condemned military equipment covered by this Act shall be subject at all times to the order of the Secretary of War. *Act of Sept. 8, 1916 (39 Stat. 843)*.

854a. *Additional compensation for master armorer at Springfield Armory.*—In addition to the compensation now allowed and paid to the master armorer at the national armory in Springfield, Massachusetts, there shall be paid to him, from and after the passage of this Act, further compensation at the rate of one thousand dollars per annum during such time as he shall perform the duties of master machinist at said armory in addition to those of master armorer. *Act of Aug. 5, 1882 (22 Stat. 299)*.

857a. *Certain appropriations available for allowance in lieu of subsistence for civilians traveling outside of the District.*—The appropriations hereinbefore made under the heading "Ordnance Department" shall be available for the payment of an allowance not to exceed $4 per day in lieu of subsistence to civilian employees of the Ordnance Department traveling on official business outside of the District of Columbia and away from their designated posts of duty. *Act of Mar. 4, 1915 (38 Stat. 1084)*.

857b. *Same.*—The appropriations hereinbefore made under the heading "Ordnance Department" shall be available for the payment of an allowance not to exceed $4 per day in lieu of subsistence to civilian employees of the Ordnance Department traveling on official business outside of the District of Columbia and away from their designated posts of duty. *Act of Aug. 29, 1916 (39 Stat. 644)*.

857c. *Salaries of clerks at Springfield Armory.*—On and after the passage of this act, in lieu of compensation now allowed to the clerks at the United States armory in Springfield, Massachusetts, including fuel and quarters, there shall be paid to each of said clerks an annual salary of one thousand six hundred and fifty dollars. *Act of June 23, 1874 (18 Stat. 282)*.

864a. *Taylor system—No salary to be paid officer, superintendent, manager, or foreman using.*—No part of the appropriations made in this bill shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while mak-

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ing or causing to be made, with a stop watch or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this bill be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and no claim for services performed by any person while violating this proviso shall be allowed. *Act of Mar. 4, 1915 (38 Stat. 1083).*

864b. *Same.*—No part of the appropriations made in this Act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this Act be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.[1] *Act of Aug. 29, 1916 (39 Stat. 648).*

[1] For similar provisions in the current sundry civil, fortifications, and naval appropriations acts, see 39 Stats. 336, 351, and 619.

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CHAPTER XXII.

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THE SIGNAL CORPS.

879a. *Composition of and details to the Aviation Section.*—The Signal Corps shall consist of one Chief Signal Officer, with the rank of brigadier general; three colonels; eight lieutenant colonels; ten majors; thirty captains; seventy-five first lieutenants; and the Aviation Section, which shall consist of one colonel; one lieutenant colonel; eight majors; twenty-four captains; and one hundred and fourteen first lieutenants, who shall be selected from among officers of the Army at large of corresponding grades or from among officers of the grade below, exclusive of those serving by detail in staff corps or departments, who are qualified as military aviators, and shall be detailed to serve as aviation officers for periods of four years unless sooner relieved; and the provisions of section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, are hereby extended to apply to said aviation officers and to vacancies created in any arm, corps, or department of the Army by the detail of said officers therefrom; but nothing in said Act or in any other law now in force shall be held to prevent the detail or redetail at any time, to fill a vacancy among the aviation officers authorized by this Act, of any officer who, during prior service as an aviation officer of the Aviation Section, shall have become proficient in military aviation. *Sec. 13, Act of June 3, 1916 (39 Stat. 174).*

(For the ensuing provision of this section see paragraph 889o.)

883a. *Exchange of typewriters and adding machines.*—Hereafter the Signal Corps may exchange typewriters and adding machines in the purchase of similar equipment. *Act of Mar. 4, 1915 (38 Stat. 1064).*

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AVIATION SECTION.

889a. *Created, duties, etc.*—There shall hereafter be, and there is hereby created, an Aviation Section, which shall be a part of the Signal Corps of the Army, and which shall be, and is hereby, charged with the duty of operating or supervising the operation of all military aircraft, including balloons and aeroplanes, all appliances pertaining to said craft, and signaling apparatus of any kind when installed on said craft; also with the duty of training officers and enlisted men in matters pertaining to military aviation. *Sec. 1, Act of July 18, 1914 (38 Stat. 514).*

889b. *Same—Officers and enlisted men provided for to be additional to regular corps allotment.*—In addition to such officers and enlisted men as shall be assigned from the Signal Corps at large to executive, administrative, scientific, or other duty in or for the Aviation Section, there shall be in said section aviation officers not to exceed sixty in number and two hundred and sixty aviation enlisted men of all grades; and said aviation officers and aviation enlisted men, all of whom shall be engaged on duties pertaining to said Aviation Section, shall be additional to the officers and enlisted men now allotted by law to the Signal Corps, the commissioned and enlisted strengths of which are hereby increased accordingly. *Sec. 2, id.*

889c. *Same—Details from line officers, tour of service, and redetail of proficient aviators.*—The aviation officers provided for in this section shall, except as hereinafter prescribed specifically to the contrary, be selected from among officers holding commissions in the line of the Army with rank below that of captain, and shall be detailed to serve as such aviation officers for periods of four years, unless sooner relieved, and the provisions of section twenty-seven of the Act of Congress approved February second, nineteen hundred and one (Thirty-first Statutes, page seven hundred and fifty-five), are hereby extended so as to apply to said aviation officers and to the vacancies created in the line of the Army by the detail of said officers therefrom, but nothing in said Act or in any other law now in force shall be held to prevent the detail or redetail at any time to fill a vacancy among the aviation officers authorized by this Act, of any officer holding a commission in the line of the Army with rank below that of captain, and who, during prior service as an aviation officer in the aviation section, shall have become especially proficient in military aviation. *Sec. 2, id.*

889d. *Same—Aviation students, selection, tour of service, etc.; no vacancies created by such detachment.*—There shall also be constantly attached to the aviation section a sufficient number of aviation students to make, with the aviation officers actually detailed in said

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section under the provisions of this Act, a total number of sixty aviation officers and aviation students constantly under assignment to, or detail in, said section. Said aviation students, all of whom shall be selected on the recommendation of the chief signal officer from among unmarried lieutenants of the line of the Army not over thirty years of age, shall remain attached to the aviation section for a sufficient time, but in no case to exceed one year, to determine their fitness or unfitness for detail as aviation officers in said section, and their detachment from their respective arms of service which under assignment to said section shall not be held to create in said arms vacancies that may be filled by promotions or original appointments. *Sec. 2, id. 515.*

889e. *Same—Details not compulsory in time of peace.*—No person, except in time of war, shall be assigned or detailed against his will to duty as an aviation student or an aviation officer. *Sec. 2, id.*

889f. *Same—Assignment to cease if officer is inefficient, etc.*—Whenever, under such regulations as the Secretary of War shall prescribe and publish to the Army, an officer assigned or detailed to duty of any kind in or with the aviation section shall have been found to be inattentive to his duties, inefficient, or incapacitated from any cause whatever for the full and efficient discharge of all duties that might properly be imposed upon him if he should be continued on duty in or with said section, said officer shall be returned forthwith to the branch of the service in which he shall hold a commission. *Sec. 2, id.*

889g. *Same—Aviation officers rated, junior military aviators, etc.*—The aviation officers hereinbefore provided for shall be rated in two classes, to wit, as junior military aviators and as military aviators. Within sixty days after this act shall take effect the Secretary of War may, upon the recommendation of the Chief Signal Officer, rate as junior military aviators any officers with rank below that of captain, who are now on aviation duty and who have, or shall have before the date of rating so authorized, shown by practical tests, including aerial flights, that they are especially well qualified for military aviation service; and after said rating shall have been made the rating of junior military aviator shall not be conferred upon any person except as hereinafter provided. *Sec. 3, id.*

889h. *Same—Rating, increased grade and pay of junior military aviators, aviation students, etc.*—Each aviation student authorized by this act shall, while on duty that requires him to participate regularly and frequently in aerial flights, receive an increase of 25 per centum in the pay of his grade and length of service under his line commission. Each duly qualified junior military aviator shall, while so serving, have the rank, pay, and allowances of one grade higher

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than that held by him under his line commission, provided that his rank under said commission be not higher than that of first lieutenant, and, while on duty, requiring him to participate regularly and frequently in aerial flights, he shall receive in addition an increase of 50 per centum in the pay of his grade and length of service under his line commission. The rating of military aviator shall not be hereafter conferred upon or held by any person except as hereinafter provided, and the number of officers with that rating shall at no time exceed fifteen. Each military aviator who shall hereafter have duly qualified as such under the provisions of this act shall, while so serving, have the rank, pay, and allowances of one grade higher than that held by him under his line commission, provided that his rank under said commission be not higher than that of first lieutenant, and, while on duty requiring him to participate regularly and frequently in aerial flights, he shall receive in addition an increase of 75 per centum of the pay of his grade and length of service under his line commission. *Sec. 3, id.*

889i. *Same—Personnel of enlisted men, rating of aviation mechanician.*—The aviation enlisted men hereinbefore provided for shall consist of twelve master signal electricians, twelve first-class sergeants, twenty-four sergeants, seventy-eight corporals, eight cooks, eighty-two first-class privates, and forty-four privates. Not to exceed forty of said enlisted men shall at any one time have the rating of aviation mechanician, which rating is hereby established, and said rating shall not be conferred upon any person except as hereinafter provided.[1] *Sec. 3, id. 516.*

889j. *Same—Instruction in art of flying, and increase of pay.*—Twelve enlisted men at a time shall, in the discretion of the officer in command of the aviation section, be instructed in the art of flying, and no enlisted man shall be assigned to duty as an aerial flyer against his will except in time of war. Each aviation enlisted man, while on duty that requires him to participate regularly and frequently in aerial flights or while holding the rating of aviation mechanician, shall receive an increase of fifty per centum in his pay. *Sec. 3, id.*

889k. *Same—Qualification certificates required, examinations for, etc.*—Except as hereinafter provided in the cases of officers now on aviation duty, no person shall be detailed as an aviation officer, or rated as a junior military aviator, or as a military aviator, or as an aviation mechanician, until there shall have been issued to him a certificate to the effect that he is qualified for the detail or rating, or for both the detail and the rating, sought or proposed in his case,

[1] *Held*, that aviation enlisted men holding the rating of aviation mechanician are entitled to the increase of pay while on furlough. (War Dept. Bull. 18, July 8, 1916.)

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and no such certificate shall be issued to any person until an aviation examining board, which shall be composed of three officers of experience in the aviation service and two medical officers, shall have examined him, under general regulations to be prescribed by the Secretary of War and published to the Army by the War Department, and shall have reported him to be qualified for the detail or rating, or for both the detail and the rating, sought or proposed in his case. *Sec. 3, id.*

889l. *Same—Issue of certificates of qualification.*—The Secretary of War shall cause appropriate certificates of qualification to be issued by The Adjutant General of the Army to all officers and enlisted men who shall have been found and reported by aviation examining boards in accordance with the terms of this act, to be qualified for the details and ratings for which said officers and enlisted men shall have been examined. *Sec. 3, id.*

889m. *Same—Service as aviation students prior to detail, rating requirements for military aviators, etc.*—Except as hereinbefore provided in the cases of officers who are now on aviation duty and who shall be rated as junior military aviators as hereinbefore authorized, no person shall be detailed for service as an aviation officer in the aviation section until he shall have served creditably as an aviation student for a period to be fixed by the Secretary of War; and no person shall receive the rating of military aviator until he shall have served creditably for at least three years as an aviation officer with the rating of junior military aviator. *Sec. 3, id.*

889n. *Same—Payments in case of death from accident.*—There shall be paid to the widow of any officer or enlisted man who shall die as the result of an aviation accident, not the result of his own misconduct, or to any other person designated by him in writing, an amount equal to one year's pay at the rate to which such officer or enlisted man was entitled at the time of the accident resulting in his death, but any payment made in accordance with the terms of this proviso on account of the death of any officer or enlisted man shall be in lieu of and a bar to any payment under the Acts of Congress approved May eleventh, nineteen hundred and eight, and March third, nineteen hundred and nine (Thirty-fifth Statutes, pages one hundred and eight and seven hundred and thirty-five), on account of death of said officer or enlisted man. *Sec. 3, id.*

889o. *Aviation officers, ratings of and qualifications for.*—Aviation officers may, when qualified therefor, be rated as junior military aviators or as military aviators, but no person shall be so rated until there shall have been issued to him a certificate to the effect that he is qualified for the rating, and no certificate shall be issued to any person until an aviation examining board, which shall be composed

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of three officers of experience in the aviation service and two medical officers, shall have examined him, under general regulations to be prescribed by the Secretary of War and published to the Army by the War Department, and shall have reported him to be qualified for the rating. No person shall receive the rating of military aviator until he shall have served creditably for three years as an aviation officer with the rating of a junior military aviator. *Sec. 13, Act of June 3, 1916 (39 Stat. 175).*

(For the preceding provision of this section see paragraph 879a.)

889p. *Same—Rank and pay of.*—Each aviation officer authorized by this Act shall, while on duty that requires him to participate regularly and frequently in aerial flights, received an increase of twenty-five per centum in the pay of his grade and length of service under his commission. Each duly qualified junior military aviator shall, while so serving, have the rank, pay, and allowances of one grade higher than that held by him under his commission if his rank under said commission be not higher than that of captain, and while on duty requiring him to participate regularly and frequently in aerial flights he shall receive in addition an increase of fifty per centum in the pay of his grade and length of service under his commission. Each military aviator shall, while so serving, have the rank, pay, and allowances of one grade higher than that held by him under his commission if his rank under said commission be not higher than that of captain, and while on duty requiring him to participate regularly and frequently in aerial flights he shall receive in addition an increase of seventy-five per centum of the pay of his grade and length of service under his commission. *Id.*

889q. *Same—Increased pay and allowances authorized in Act of March second, nineteen hundred and thirteen, repealed.*—The provisions of the Act of March second, nineteen hundred and thirteen,[1] allowing increase of pay and allowances to officers detailed by the Secretary of War on aviation duty, are hereby repealed. *Id.*

889r. *Married officers of line of Army eligible for detail to aviation duty—Enlisted men of aviation section to be instructed in art of flying.*—Hereafter married officers of the line of the Army shall be eligible equally with unmarried officers and subject to the same conditions for detail to aviation duty; and the Secretary of War shall have authority to cause as many enlisted men of the aviation section to be instructed in the art of flying as he may deem necessary. *Id.*

889s. *Age of officers not a bar to original detail, and neither age nor rank a bar to subsequent details.*—Hereafter the age of officers shall not be a bar to their first detail in the aviation section of the

[1] Par. 889, ante, or 37 Stat. 705.

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Signal Corps, and neither their age nor their rank shall be a bar to their subsequent details in said section. *Id.*

889t. *Aviator, Signal Corps, appointment of qualified civilians as.*—When it shall be impracticable to obtain from the Army officers suitable for the aviation section of the Signal Corps in the number allowed by law, the difference between that number and the number of suitable officers actually available for duty in said section may be made up by appointments in the grade of aviator, Signal Corps, and that grade is hereby created. The personnel for said grade shall be obtained from especially qualified civilians who shall be appointed and commissioned in said grade. *Id.*

889u. *Same—Pay and provision for discharge of.*—Whenever any aviator shall have become unsatisfactory he shall be discharged from the Army as such aviator. The base pay of an aviator, Signal Corps, shall be $150 per month, and he shall have the allowances of a master signal electrician and the same percentage of increase in pay for length of service as is allowed to a master signal electrician. *Id.*

(For the ensuing provision of this section see paragraph 890a.)

ADVISORY COMMITTEE FOR AERONAUTICS.

889v. *Composition of.*—An Advisory Committee for Aeronautics is hereby established, and the President is authorized to appoint not to exceed twelve members, to consist of two members from the War Department, from the office in charge of military aeronautics; two members from the Navy Department, from the office in charge of naval aeronautics; a representative each of the Smithsonian Institution, of the United States Weather Bureau, and of the United States Bureau of Standards; together with not more than five additional persons who shall be acquainted with the needs of aeronautical science, either civil or military, or skilled in aeronautical engineering or its allied sciences. *Act of Mar. 3, 1915 (38 Stat. 930).*

889w. *Same—No compensation for members.*—The members of the Advisory Committee for Aeronautics, as such, shall serve without compensation. *Id.*

889x. *Same—Duty to supervise research, etc.*—It shall be the duty of the Advisory Committee for Aeronautics to supervise and direct the scientific study of the problems of flight, with a view to their practical solution, and to determine the problems which should be experimentally attacked, and to discuss their solution and their application to practical questions. In the event of a laboratory or laboratories, either in whole or in part, being placed under the direction of the committee, the committee may direct and conduct research and experiment in aeronautics in such laboratory or laboratories. *Id.*

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889y. *Same—Rules of conduct for.*—Rules and regulations for the conduct of the work of the committee shall be formulated by the committee and approved by the President. *Id.*

889z. *Same—Appropriation for experimental work, etc.*—The sum of $5,000 a year, or so much thereof as may be necessary, for five years is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available, for experimental work and investigations undertaken by the committee, clerical expenses and supplies, and necessary expenses of members of the committee in going to, returning from, and while attending, meetings of the committee. *Id.*

889aa. *Same—Annual report to include itemized statement of expenditures.*—An annual report to the Congress shall be submitted through the President, including an itemized statement of expenditures. *Id.*

889bb. *Appropriation for purchase, manufacture, etc., of airships and other aerial machines for the Aviation Section.*—Not more than $13,281,666 of the foregoing appropriation[1] shall be used for the purchase, manufacture, maintenance, operation, and repair of airships and other aerial machines and accessories necessary in the Aviation Section; and for the purchase, maintenance, repair, and operation of motor-propelled, passenger-carrying vehicles which may be necessary for the Aviation Section. *Act of Aug. 29, 1916 (39 Stat. 622).*

889cc. *Appropriation for payment of officers and enlisted men of the Aviation Section, Officers' Reserve Corps and Enlisted Reserve Corps, when called into active service.*—Of the sum last above mentioned $900,000, or so much thereof as may be necessary, will be available for paying and otherwise providing for such officers of the Officers' Reserve Corps of the Aviation Section of the Signal Corps and such enlisted men of the Enlisted Reserve Corps of the Aviation Section of the Signal Corps as may be called into active service. *Id.*

889dd. *Appropriation for development of suitable type of aviation motor.*—Not to exceed $50,000 of the above sum will be available for the payment of all expenses in connection with the development of a suitable type of aviation motor, under such regulations as the Secretary of War may prescribe. *Id.*

889ee. *Secretary of War to receive officers and enlisted men of Coast Guard for instruction in aviation at aviation schools.*—At the request of the Secretary of the Treasury the Secretaries of War and Navy are authorized to receive officers and enlisted men of the

[1] The appropriation referred to is one of $14,281,766 for the Signal Service of the Army.

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Coast Guard for instruction in aviation at any aviation school maintained by the Army and Navy, and such officers and enlisted men shall be subject to the regulations governing such schools *Id.*, *601.*

889ff. *Obtaining basic patents for manufacture and development of aircraft.*—To enable the Secretary of War and the Secretary of the Navy to secure by purchase, condemnation, donation, or otherwise, such basic patent or patents as they may consider necessary to the manufacture and development of aircraft in the United States and its dependencies, for governmental and civil purposes, under such regulations as the Secretary of War and the Secretary of the Navy may prescribe, $1,000,000. *Act of Mar. 4, 1917 (Pub. No. 391, 39 Stat. —).*

889gg. *Same—Purchase arrangements advantageous to Government may be entered into*—Such arrangements may be made in relation to the purchase of any basic patent connected with the manufacture and development of aircraft in the United States as in the judgment of the Secretary of War and the Secretary of the Navy will be of the greatest advantage to the Government and to the development of the industry. *Id.*

889hh. *Same—Bond to be required where validity of patents is in litigation.*—In the event there shall be pending in court litigation involving the validity of said patent or patents, bond, with good and approved security in an amount sufficient to indemnify the United States, shall be required, payable to the United States, conditioned to repay to the United States the amount paid for said patent or patents in the event said patent or patents are finally adjudged invalid. *Id.*

889ii. *Consolidation of balances of appropriation for National Advisory Committee for Aeronautics.*—The balances under the several items of the appropriation "National Advisory Committee for Aeronautics," carried in the Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, approved August twenty-ninth, nineteen hundred and sixteen, are hereby consolidated into a single fund and may be expended by the committee for its purposes as stated in the paragraph of Public Act Numbered Two hundred and seventy-one, Sixty-third Congress, approved March third, nineteen hundred and fifteen, establishing the committee. *Id.*

890a. *Enlisted force, composition of.*—The total enlisted strength of the Signal Corps shall be limited and fixed from time to time by the President in accordance with the needs of the Army, and shall consist of master signal electricians; sergeants, first class; sergeants; corporals; cooks; horseshoers; private, first class; and privates; the number in each grade being fixed from time to time by the President.

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The numbers in the various grades shall not exceed the following percentages of the total authorized enlisted strength of the Signal Corps, namely: Master signal electricians, two per centum; sergeants, first class, seven per centum; sergeants, ten per centum; corporals, twenty per centum. The number of privates, first class, shall not exceed twenty-five per centum of the number of privates. *Sec. 13, Act of June 3, 1916 (39 Stat. 176).*

(For the provision of this section immediately preceding this paragraph see paragraph 889u. For authorization for one thousand additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property, and the similar detail of one hundred additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

890b. *Same—Organization of into companies, battalions, and aero squadrons.*—Authority is hereby given the President to organize, in his discretion, such part of the commissioned and enlisted personnel of the Signal Corps into such number of companies, battalions, and aero squadrons as the necessities of the service may demand. *Id.*

890c. *Same—May be mounted.*—Enlisted men detailed for signal duty shall, when it is deemed necessary, be mounted on horses provided by the Government.[1] *Sec. 1197, R. S.*

901a. *Property returns to be made semiannually.*—The Act of Congress approved October twelfth, eighteen hundred and eighty-eight, entitled "An Act to make enlisted men of the Signal Corps responsible for public property," be amended so as to read that property returns of the Signal Corps shall be rendered semiannually or more often. *Act of Apr. 27, 1914 (38 Stat. 353).*

901b. *Settlement of accounts between other bureaus of War Department, etc., and the Signal Corps.*—Hereafter in the settlement of transactions between appropriations under the Signal Corps, or between the Signal Corps and another office or bureau of the War Department, or of any other executive department of the Government, payment therefor shall be made by the proper disbursing officer of the Signal Corps, or of the office, bureau, or department concerned. *Act of Aug. 29, 1916 (39 Stat. 622).*

[1] The enlisted men mentioned in this section were those detailed from the battalion of Engineers for signal duty under sec. 1196, R. S. The provision may be regarded as applicable to enlisted men of the Signal Corps as constituted under later statutes.

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CHAPTER XXIII.

CHAPLAINS.

	Par.		Par.
Chaplains, appointment of	902a	Same—Preference to be given to applicants who have been honorably discharged from the Army	902b

902a. *Chaplains, appointment of.*—The President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army at the rate of not to exceed, including chaplains now in service, one for each regiment of Cavalry, Infantry, Field Artillery, and Engineers, and one for each one thousand two hundred officers and men of the Coast Artillery Corps, with rank, pay, and allowances as now authorized by law. *Sec. 15, Act of June 3, 1916 (39 Stat. 176).*

902b. *Same—Preference to be given to applicants who have been honorably discharged from the Army.*—In appointment of chaplains in the Regular Army, preference and priority shall be given to applicant veterans, if otherwise duly qualified and who shall not have passed the age of forty-one years at the time of application, who have rendered honorable war service in the Army of the United States or who have been honorably discharged from such Army. *Id.*

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CHAPTER XXIV.

COMMISSIONED OFFICERS.

	Par.
Original appointments of second lieutenants, except cadet graduates, to be provisional	918a
Officers appointed in Army in time of peace to be citizens of United States	918b
Thanks of Congress tendered to certain officers of Army and Navy	927a
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Same—Certain officers to be advanced one grade when placed on retired list	927c
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Same—Rank of major general to cease and determine when officer so promoted is retired	927g
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Detached Officers' List	929a–929h
Creation of for duty with the National Guard, etc	929a
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Same—Vacancies caused by, above grade of second lieutenant, to be filled by promotion	929c
Same—Assignment of details from each arm	929d
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Cavalry increased by 17 colonels and Infantry by 4 colonels to equalize promotions	929i
Examination extended to promotion to all grades below that of brigadier general	930a
Same—Character of examination for grades of major and lieutenant colonel	930b

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	Par.
Appointment from civil life, recommissioning honoraby discharged officers, lineal and relative rank	931a
Loss of files on account of increase of arm, corps, or branch, due to suspension from promotion on failure to pass examination, allowance for	931b
Transfer, with or without promotion, from one arm of the service to another in order to lessen inequalities in promotions	935a
Sales of Army supplies, etc., to military schools	951a
Same—Receipts to be credited to original appropriations	951b
Sale of ordnance property to educational institutions and soldiers' and sailors' orphans' homes	951c
Issue of ordnance and ordnance stores to Washington High School	953a
Issue of magazine rifles, etc., for target practice, to clubs and schools	954a
Same—Regulations to be prescribed by Secretary of War	954b
Issue of quartermaster stores, etc., to schools for maintenance of military instruction camps	954c
Issue of targets and target materials, etc., to rifle clubs and schools	954d
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Under age of 50 years and not above grade of captain	958a
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Same—Advancement of brigadier general on the retired list, with certain Civil War service, one grade	969b
Same—Advancement of retired brigadier general who had certain Civil War service as senior colonel, etc	969c
Same—Advancement to grade of major general on retired list of retired officer who had certain Civil War service, etc	969d
Same—Advancement of retired colonel one grade on retired list who had certain service in Indian campaigns, War with Spain, etc	969e
Retired officer assigned to active duty as post commander during movement of troops, pay and allowances of	975a

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918a. *Original appointments of second lieutenants, except cadet graduates, to be provisional.*—Hereafter all appointments of persons other than graduates of the United States Military Academy to the grade of second lieutenant in the Regular Army shall be provisional for a period of two years, at the close of which period such appointments shall be made permanent if the appointees shall have demonstrated, under such regulations as the President may prescribe, their suitability and moral, professional, and physical fitness for such permanent appointment, but should any appointee fail so to demonstrate his suitability and fitness, his appointment shall terminate; and should any officer become eligible for promotion to a vacancy in a higher grade and qualify therefor before the expiration of two years from the date of his original appointment, he shall receive a provisional appointment in such higher grade, which appointment shall be made permanent when he shall have qualified for permanent appointment upon the expiration of two years from the date of his original appointment, or shall terminate if he shall fail so to qualify. *Sec. 23, Act of June 3, 1916 (39 Stat. 181).*

918b. *Officers appointed in Army in time of peace to be citizens of United States.*—No part of the appropriations made in this Act shall be available for the salary or pay of any person hereafter, in time of peace, appointed an officer in the Army who is not a citizen of the United States.[1] *Act of Aug. 29, 1916 (39 Stat. 649).*

927a. *Thanks of Congress tendered to certain officers of Army and Navy.*—The thanks of Congress are hereby extended to the following officers of the Army and Navy of the United States who, as members of the late Isthmian Canal Commission, have rendered distinguished service in constructing the Panama Canal, to wit: Colonel George W. Goethals, chairman and chief engineer; Brigadier General William C. Gorgas, sanitary expert; Colonel H. F. Hodges, Lieutenant Colonel William L. Sibert, and Commander H. H. Rousseau. *Sec. 1, Act of Mar. 4, 1915 (38 Stat. 1190).*

927b. *Promotion of certain officers of Army and Navy.*—The President is hereby authorized, by and with the advice and consent of the Senate, to advance in rank Colonel George W. Goethals to the grade of major general of the line, United States Army; Brigadier General William C. Gorgas to the rank of major general in the Medical Department, United States Army; Colonel H. F. Hodges and Lieutenant Colonel William L. Sibert to the grade of brigadier general of the line, United States Army; and Commander H. H. Rousseau to the grade of rear admiral of the lower Nine, United States Navy. *Sec. 2, id. 1191.*

[1] *Held*, that this does not repeal the provisions of existing law authorizing the appointment of native Filippinos as officers of Philippine Scouts, and of native citizens of Porto Rico as officers in the Porto Rico regiment. (War Department Bulletin No. 28, Aug. 18, 1916).

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927c. *Same—Certain officers to be advanced one grade when placed on retired list.*—Such officers of the Army and Navy as were detailed for duty with the Isthmian Canal Commission on the Isthmus of Panama for more than three years, and who shall not have been advanced in rank by any other provisions of this bill, shall be advanced one grade in rank upon retirement. *Sec. 3, id.*

927d. *Same—Officers now on retired list to be immediately advanced one grade.*—Any officer of the Army or Navy now on the retired list with similar service shall be immediately advanced one grade in rank on the retired list of the Army or Navy. *Sec. 3, id.*

927e. *Promotions authorized by section 2 of Act to temporarily increase the grades.*—The numbers in such grades provided for in sections two and four[1] of this Act, except where vacancies occurring in any grade by the provisions of this Act can be filled by such officers in a lower grade as are entitled to the benefits of this Act, shall be temporarily increased during the time such offices may be held. *Sec. 5, id.*

927f. *Medical officer promoted to be head of Medical Department, not governed by law as to details.*—The officer who may be advanced and appointed major general in the Medical Department, United States Army, shall thereupon become the head of such department, and the operation of so much of section twenty-six of the Act of February second, nineteen hundred and one, as limits the term of office of the head of the Medical Department, United States Army, shall be suspended during the incumbency of the head of the department who may be appointed under this Act. *Sec. 5, id.*

927g. *Same—Rank of major general to cease and determine when officer so promoted is retired.*—Whenever the head of the Medical Department appointed under the provisions of this Act shall become separated from the active list of the Army, by retirement or otherwise, the extra office or grade to which he shall have been so advanced or appointed shall cease and determine, and thereafter the rank of the head of the Medical Department, United States Army, shall be that of a brigadier general. *Sec. 5, id.*

927h. *Promotions authorized not to retard promotion to which any officer is entitled under existing law.*—Nothing in this Act shall operate to interfere with or retard the promotion to which any officer would be entitled under existing law. *Sec. 5, id.*

927i. *Officers promoted to be junior to officers who now rank them when such officers reach same grade.*—The officers advanced to higher grades under this Act shall be junior to the officers who now rank them under existing law when these officers have reached the same grade. *Sec. 5, id.*

[1] Sec. 4 authorizes the President to promote certain officers of the Public Health Service and is omitted from this compilation.

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927j. *Officers benefited by Act entitled to retirement at any time on application at seventy-five per centum of pay of active rank.*—At any time after the passage of this Act any officer of the Army or Navy to be benefited by the provisions of this Act may, on his own application, be retired by the President at seventy-five per centum of the pay of the rank upon which he is retired. *Sec. 6, id.*

(See paragraphs 958i–958k, *post.*)

927k. *General officers of the line who were promoted for service in constructing the Panama Canal to take rank over officers of same grades hereafter appointed.*—The general officers of the line who were appointed as such pursuant to the Act of March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page eleven hundred and ninety-one), shall take rank in their present grades over all officers hereafter appointed to like grades. *Act of Aug. 29, 1916 (39 Stat. 623).*

DETACHED OFFICERS' LIST.

929a. *Creation of for duty with the National Guard, etc.*—On July first, nineteen hundred and sixteen, the line of the Army shall be increased by eight hundred and twenty-two extra officers of the Cavalry, Field Artillery, Coast Artillery Corps, and Infantry arms of the service, of grades from first lieutenant to colonel, inclusive, lawfully available for detachment from their proper arms for duty with the National Guard, or other duty, the usual period of which exceeds one year. Said extra officers, together with the two hundred detached officers provided for by the Act of Congress approved March third, nineteen hundred and eleven,[1] shall, on and after July first, nineteen hundred and sixteen, constitute the Detached Officers' List, and all positions vacated by officers assigned to said list, and the officers so assigned shall be subject to the provisions of section twenty-seven of the Act of Congress approved February second, nineteen hundred and one, with reference to details to the staff corps. *Sec. 25, Act of June 3, 1916 (39 Stat. 183).*

929b. *Same—Proportionate number authorized for each grade.*—The total number of officers hereby authorized for each grade on said list entire shall be in proportion to the total number of officers of the corresponding grade now authorized by law other than this Act for all of the said four arms combined, exclusive of second lieutenants and of the two hundred extra officers authorized by the Act of Congress approved March third, nineteen hundred and eleven,[2] and exclusive also of the additional officers authorized by the Act to restore

[1] Paragraph 929, *ante*, or 36 Stat. 1058.
[2] Par. 929, ante, or 36 Stat. 1058.

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lineal rank lost through the system of regimental promotion formerly in force; and the total number of officers hereby authorized for each grade in each of said arms on said list shall be in the proportion borne by the number of officers now authorized by law other than this Act for such grade and arm to the total number of officers now authorized by law other than this Act for the corresponding grade in all of the said four arms combined, exclusive of the extra and additional officers last hereinbefore specified and excluded. *Id.*

(See paragraph 929f.)

929c. *Same—Vacancies caused by, above grade of second lieutenant, to be filled by promotion.*—All vacancies created or caused by the foregoing provisions of this section in grades above that of second lieutenant shall be filled by promotion according to law existing on and before the date of approval of this Act, and subject to the examinations prescribed by existing law. *Id.*

929d. *Same—Assignment of details from each arm.*—As soon as practicable after such promotions shall have been made, there shall be detached from each arm and assigned to the Detached Officers' List a number of officers of each grade equal to the number of officers of said grade by which said arm shall have been increased by the foregoing provisions of this section; and thereafter any vacancy created or caused in any of the said arms of the service by the assignment of an officer of any grade to said Detached Officers' List shall be filled, subject to such examination as is now or may hereafter be prescribed by law, by the promotion of the officer who shall be the senior in length of commissioned service of those eligible to promotion in the next lower grade in the arm in which such vacancy shall occur. *Id.*

929e. *Same—Manchu law to govern assignments to.*—No officer of any of said arms of the service shall be permitted to remain on said Detached Officers' List for more than forty-five days unless he shall have been actually present for duty for at least two years out of the last preceding six years with an organization composed of one or more statutory units, or the equivalent thereof, of the arm to which he shall belong. Any vacancy created in said list by the removal of any officer therefrom because he shall not have been present for duty as before prescribed in this proviso shall be filled by the transfer to said list of an officer having the same grade and belonging to the same arm as the officer whose removal from said list shall have created said vacancy; but, except as before prescribed in this proviso, all officers who shall have been assigned to said list shall remain thereon for not less than four years from the respective dates of their assignment thereto, unless in the meantime they shall have been

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separated entirely from the Army, or shall have been promoted or appointed to higher offices, or shall have been retired from active service.[1] *Id.*

929f. *Same—Vacancies occurring after original assignment to list, filling of.*—After the apportionment of officers to said Detached Officers' List shall have been made as authorized by this Act, whenever any vacancy shall have been caused in said list by the separation of an officer of any grade therefrom, such vacancy shall, except as prescribed in the last preceding proviso, be filled by the detail and assignment to said list of an officer of the corresponding grade in that arm in which there shall be found the officer of the next lower grade who at that time shall be the senior in length of commissioned service of all the officers of the said lower grade in all of the four arms hereinbefore specified; if two or more officers of different arms shall be found to have equal seniority in length of commissioned service in said lower grade, the question of seniority shall be decided by their relative standing on the list of the commissioned officers of the Army. *Id.*

(For the next provision of this section see par. 929i; see also par. 929h.)

929g. *Same—Assignment of constructive dates of original commission.*—In applying section twenty-five of the national defense Act approved June third, nineteen hundred and sixteen, the President shall assign to officers of the Army such constructive dates of original commission, from which lengths of commissioned service shall be computed, as will preserve their rights to promotion in accordance with their relative order on the lineal lists of their arms and continue in effect losses of files occasioned by sentences of courts-martial or failures to pass required examinations for promotion, said constructive dates of original commission to be subject to change whenever a change thereof may be necessary in order to carry into effect losses of files hereafter incurred by any officer through a sentence of court-martial or a failure to pass a required examination for promotion. *Act of Aug. 29, 1916 (39 Stat. 623).*

(See paragraph 929a.)

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[1] *Held*, that while an officer's name must be removed from the Detached Officers' List when he has not had certain service with troops, it can not otherwise be removed from that list (except on account of retirement, separation from service, etc.), until it has been thereon for at least four years; therefore an officer's name may not be removed from the Detached Officers' List for the purpose of detailing him to the General Staff Corps for the reason that while officers may, pursuant to various provisions of law, be transferred from one position to another, as from line to staff and vice versa, or from line to Detached Officers' List and vice versa, it is clear that one officer may not hold two positions at the same time, thus: An officer may not occupy a position in the line and one in the staff at the same time; neither may he occupy a position on the Detached Officers' List and one in the staff or line at the same time. (War Dept. Bull. 57, Dec. 22, 1916.)

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929h. *Same—Senior officer in any grade according to constructive date of original commission to be considered senior in that grade.*—In determining the arm from which a detail is to be made to a vacancy in the detached officers' list, as provided in the third proviso of section twenty-five of the national defense Act approved June third, nineteen hundred and sixteen, the officer of any grade who is the senior in that grade according to the constructive dates of original commission provided for in the preceding proviso shall be considered the senior in length of commissioned service of all officers of that grade. *Id.*

(See paragraph 929f.)

929i. *Cavalry increased by seventeen colonels and Infantry by four colonels to equalize promotions.*—With a view further to equalize inequalities in past promotions of officers of the line of the Army, on July first, nineteen hundred and sixteen, the Cavalry shall be increased by seventeen colonels, and the Infantry by four colonels, all of whom shall be additional officers in that grade, and shall not bar nor retard the promotion to which any officer would be entitled if the appointment of the said additional officers had never been authorized; and after July first, nineteen hundred and nineteen, no vacancies occurring among the said additional officers shall be filled and the offices so vacated shall cease and determine. *Sec. 25, act of June 3, 1916 (39 Stat. 184.)*

(For the provision of this section immediately preceding this paragraph see paragraph 929f, and for the ensuing provision see paragraph 935a. For the number of regiments of Cavalry and Infantry see paragraph 331a; for the organization of a Cavalry regiment see paragraph 1071a; and for the organization of an Infantry regiment see paragraph 1095a.)

930a. *Examinations extended to promotions to all grades below that of brigadier general.*—The provisions of existing law requiring examinations to determine fitness for promotion of officers of the Army are hereby extended to include promotions to all grades below that of brigadier general. *Id. 183.*

(For the provision of this section immediately preceding this paragraph see see paragraph 931a.)

930b. *Same—Character of examination for grades of major and lieutenant colonel.*—Examinations of officers in the grades of major and lieutenant colonel shall be confined to problems involving the higher functions of staff duties and command. *Id.*

931a. *Appointment from civil life, recommissioning honorably discharged officers, lineal and relative rank of.*—The President may recommission persons who have heretofore held commissions in the Regular Army and have left the service honorably, after ascertain-

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ing that they are qualified for service physically, morally, and as to age and military fitness; such recommissioned officers shall take rank at the foot of the respective grades which they held at the time of their separation from the Army.[1] *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 331g, and for the ensuing provision see paragraph 930a)

931b. *Loss of files on account of increase of arm, corps, or branch, due to suspension from promotion on failure to pass examination, allowance for.*—When by reason of increase in the arm, corps, or branch of the service in which an officer is commissioned his loss of files in lineal rank due to suspension from promotion on account of failure to pass the required examination therefor exceeds the loss he would have sustained if no such increase had occurred, he shall, if promoted upon reexamination, be advanced to the position he would have occupied in the grade to which promoted had no increase occurred. *Act of Aug. 29, 1916 (39 Stat. 623).*

935a. *Transfer, with or without promotion, from one arm of the service to another in order to lessen inequalities in promotions.*—For the purpose of lessening as much as possible inequalities of promotion due to the increase in the number of officers of the line of the Army under the provisions of this Act, any vacancies created or caused by this Act in commissioned grades below that of lieutenant colonel in any arm of said line may, in the discretion of the President and under such regulations as he may prescribe in furtherance of the purpose stated in this proviso, be filled by the promotion or transfer without promotion of officers of other branches of the line of the Army; but no such promotion or transfer shall be made in the case of any officer unless it shall have been recommended by an examining board composed of five officers, senior in rank to such officer, and of the arm to which the promotion or transfer of such officer shall have been proposed, who, after having made a personal examination of such officer and of his official record, shall have reported him qualified for service in said arm in the grade to which his pro-

[1] *Held*, that this provision creates no new office, and that a former officer can only be recommissioned thereunder to fill an existing vacancy. (64–213.2, J. A. G., June 20, 1916.) *Held, further*, that this provision relates exclusively to persons who are not a part of the Army and does not apply to officers on the retired list. (88–110, J. A. G., May 27, 1916.) Also held, that one who prior to the passage of the national-defense act had honorably resigned from the Medical Corps while a captain may, though he be over 30 years of age, be recommissioned (that is, reappointed) in said corps under the above provisions of section 24 of that act, without regard to the requirement of section 10 thereof that persons hereafter commissioned in the Medical Corps shall be between the ages of 22 and 30 years, the latter provision, in respect of age at least, being applicable to original appointments as first lieutenants in said corps.

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motion or transfer shall have been proposed. *Sec. 25, Act of June 3, 1916 (39 Stat. 185).*

(See par. 929l for increase of 17 colonels of Cavalry and 4 colonels of Infantry to equalize inequalities in past promotions of officers of the line of the Army; see also paragraphs 929a, 929b, 929c, 929d, 929e, 929f, and 929i for the preceding provisions of this section.)

951a. *Sales of Army supplies, etc., to military schools.*—Under such regulations as the Secretary of War may prescribe, educational institutions to which an officer of the Army is detailed as professor of military science and tactics may purchase from the War Department for cash, for the use of their military students, such stores, supplies, matériel of war, and military publications as are furnished to the Army, such sales to be at the price listed to the Army with the cost of transportation added. *Act of July 17, 1914 (38 Stat. 512).*

951b. *Same—Receipts to be credited to original appropriations.*—All moneys received from the sale of stores, supplies, matériel of war, and military publications to educational institutions to which an officer of the Army is detailed as professor of military science and tactics shall, respectively, revert to that appropriation out of which they were originally expended and shall be applied to the purposes for which they are appropriated by law. *Id.*

951c. *Sales of ordnance property to educational institutions and soldiers' and sailors' orphans' homes.*—Sales of articles of ordnance property are authorized to educational institutions and State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to them. *Act of May 11, 1908 (35 Stat. 125).*

953a. *Issue of ordnance and ordnance stores to Washington High School.*—The Secretary of War is authorized to issue, at his discretion and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government and which can be spared for that purpose, such as may appear to be required for military instruction and practice by the students of the High School of Washington, District of Columbia, and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe keeping thereof and for the return of the same when required. *Joint Res. No. 9 of Feb. 5, 1891 (26 Stat. 1113).*

954a. *Issue of magazine rifles, etc., for target practice, to clubs and schools.*—The Secretary of War is hereby authorized to issue, without expense to the United States, for use in target practice, United States magazine rifles and appendages therefor not of the existing service model and not necessary for the maintenance of a proper reserve supply, together with forty rounds of ball cartridges suitable to said arm, for each range at which target practice is had, not to exceed a total of one hundred and twenty rounds per year per man participat-

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ing in target practice, to rifle clubs organized under the rules of the National Board for the Promotion of Rifle Practice and to schools having a uniformed corps of cadets and carrying on military training, in sufficient number for the conduct of proper target practice. *Act of Apr. 27, 1914 (38 Stat. 370).*

954b. *Same—Regulations to be prescribed by Secretary of War.*—Issues of public property under this provision shall be made in compliance with regulations prescribed by the Secretary of War insuring the designed use of the property issued, providing against loss to the United States through lack of proper care, and for the return of the property when required, and embodying such other requirements as he may consider necessary adequately to safeguard the interests of the United States. *Id.*

954c. *Issue of quartermaster stores, etc., to schools for maintenance of military instruction camps.*—The Secretary of War is authorized to issue, at his discretion and under such regulations as he may prescribe, such quartermaster supplies and stores belonging to the Government, and which can be spared for that purpose, as may appear to be required for the establishment and maintenance of military instruction camps by the students of any educational institution to which an officer of the Army is detailed as professor of military science and tactics; and the Secretary of War shall require a bond in each case in the value of the property for the care and safekeeping thereof and for the return of the same when required. *Act of May 18, 1916 (39 Stat. 123).*

954d. *Issue of targets and target materials, etc., to rifle clubs and schools.*—The Secretary of War is hereby authorized to issue, under such rules and regulations as he may prescribe, for use in target practice, targets, target materials, and other necessary accessories, to rifle clubs organized under the rules of the National Board for the Promotion of Rifle Practice and to schools having a uniformed corps of cadets and carrying on military training, in sufficient number for the proper conduct of target practice. *Act of Aug. 29, 1916 (39 Stat. 643).*

955a. *Issue of ammunition of old model to schools to which issue of artillery is authorized.*—Hereafter ammunition of older model than current may be issued for the instruction in target practice of students at the institutions to which the issue of artillery is authorized to the value of not more than five thousand dollars of original cost in any one year. *Act of Mar. 3, 1909 (35 Stat. 730).*

955b. *Target practice at educational institutions, etc.*—For manufacture of ammunition, targets, and other accessories for small-arms and machine-gun target practice and instruction; marksmen's medals, prize arms, and insignia for all arms of the service; and ammunition, targets, target materials, and other accessories may be issued

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for small-arms target practice and instruction at the educational institutions and State soldiers' and sailors' orphans' homes to which issues of small arms are lawfully made, under such regulations as the Secretary of War may prescribe, provided the total value of the stores so issued to the educational institutions and homes does not exceed $30,000[1] * * *. *Act of Mar. 4, 1915 (38 Stat. 1082).*

TRANSFER OF RETIRED OFFICERS TO ACTIVE LIST.

958a. *Under age of fifty years, and not above grade of captain.*—Hereafter the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to transfer to the active list of the Army any officer under fifty years of age and with rank not above that of captain who may have been transferred heretofore or who may be transferred hereafter for physical disability from the active to the retired list of the Army by the action of any retiring board. *Act of Mar. 4, 1915 (38 Stat. 1068).*

958b. *Same—Place to which transferred on active list.*—Such officer shall be transferred to the place on the active list which he would have had if he had not been retired, and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted. *Id.*

958c. *Same—Promition after examination.*—Such officer shall stand a satisfactory medical and professional examination for promotion as now provided for by law. *Id.*

958d. *Officers retired for physical disability, transfer to active list.*—The President be, and he is hereby, authorized within two years[2] of the approval of this act, by and with the advice and consent of the Senate, to transfer to the active list of the Army any officer who may have been transferred heretofore for physical disability from the active to the retired list of the Army by the action of any retiring board. *Id.*

958e. *Same—Officers heretofore transferred entitled to benefits of Act.*—Any officer who may have already been transferred from the retired list to the active list shall receive the benefits of this act. *Id. 1069.*

958f. *Details for active duty, rank and pay of retired officers receiving.*—Hereafter any retired officer, who has been or shall be detailed on active duty, shall receive the rank, pay, and allowances of the grade, not above that of major, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of

[1] Similar provision in Act of Apr. 27, 1914 (38 Stat. 370).
[2] See 958b as to place to be occupied on active list and 958c as to examination prior to promotion.

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time during which he has been detailed on active duty since his retirement.[1] *Sec. 24, Act of June 3, 1916 (39 Stat. 183).*

(For provision of this section immediately preceding this paragraph see par. 961a. In determining rights of officers under this paragraph, see par. 1084a for provision that officers retired before the separation of the Field Artillery from the Coast Artillery shall be regarded as having belonged to the Field Artillery.)

958g. *List of and periodical examination of officers retired for disability with a view to assigning them to active duty.*—The Secretary of War shall make a list of all officers of the Army who have been placed on the retired list for disability and shall cause such officers to be examined at intervals as may be advisable, and such officers as shall be found to have recovered from such disabilities or to be able to perform service of value to the Government sufficient to warrant such action shall be assigned to such duty as the Secretary of War may approve. *Act of Aug. 29, 1916 (39 Stat. 629).*

958h. *Officers retired for services in constructing Panama Canal, certain may be transferred to active list.*—Hereafter the President be, and he is hereby, authorized, within one year of the approval of this Act, by and with the advice and consent of the Senate, to transfer, upon application, to the active list of the Army any officer under fifty years of age who may have been transferred heretofore from the active to the retired list of the Army under the Act to provide for recognizing the services of certain officers of the Army, Navy, and Public Health Service for their services in connection with the construction of the Panama Canal, and for other purposes, approved March fourth, nineteen hundred and fifteen.[2] *Act of Feb. 23, 1917 (Pub. No. 349, 39 Stat. —).*

958i. *Same—Rank, grade, and arm.*—Such officers shall take rank at the foot of the respective grades which they held at the time of their retirement and shall be carried as an additional number in the grade to which he may be transferred or at any time thereafter promoted, and shall be promoted on the same date as the officer next above him in rank, and shall be commissioned in the arm or department of the Army from which he was retired. *Id.*

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[1] *Held*, that the act of June 3, 1916, does not expressly, or by necessary implication, repeal or modify any part of the act of March 2, 1903, and that as the latter act expressly provides that time after retirement shall not be counted for longevity purposes, officers coming within the provision in question of the act of June 3, 1916, are not entitled to any higher pay in the grade that they would have attained in due course of promotion if they had remained on the active list than the pay of such higher grade computed on the length of their service at the time of their retirement.

(Comp. Treas., July 28, 1916. War Dept. Bull. 28, 1916.)

Held, that service of a retired officer under a commission in the Volunteers during the Spanish-American War could not be counted for the purpose of advancement in grade under section 24 of the national defense act, last sentence, which applies only to officers "*detailed* to active duty." (War Dept. Bull. 39, Oct. 6, 1916.)

[2] See pars. 927a–927k, ante.

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958j. *Same—Examination for transfer and for promotion.*—Such officer shall stand a satisfactory medical examination, and when promoted shall stand the medical and professional examinations provided for by law. *Id.*

958k. *Same—After transfer, subsequent retirement only for age or disability.*—Any officer transferred to the active list under this Act shall not again be entitled to the benefits of the Panama Canal Act described above, except when retired for age or for physical disability incurred in the line of duty. *Id.*

961a. *Employment of retired officers in time of war.*—In time of war retired officers of the Army may be employed on active duty, in the discretion of the President, and when so employed they shall receive the full pay and allowances of their grade. *Sec. 24, Act of June 3, 1916 (39 Stat. 183).*

(For the provision of this section immediately preceding this paragraph see paragraph 930b, and for the ensuing provision see paragraph 958f.)

969a. *Retired Army officers with certain Civil War service, may be appointed and retired with increased rank.*—The President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, any brigadier general of the Army on the retired list who has held the rank and command of major general of Volunteers and performed the duties incident to that grade in time of actual warfare, and has been honorably discharged, and who served with credit in the Regular or Volunteer forces during the Civil War prior to April ninth, eighteen hundred and sixty-five, to the grade of major general in the United States Army and place him on the retired list with the pay of brigadier general on the retired list; and any officer now on the retired list of the Army who served with credit for more than two years as a commissioned officer of Volunteers during the Civil War prior to April ninth, eighteen hundred and sixty-five, and who subsequently served with credit for more than forty years as a commissioned officer of the Regular Army, including service in command of troops in five Indian campaigns, the War with Spain, and the Philippine insurrection, and to whom the congressional medal of honor for most distinguished conduct in action has been twice awarded, and who has also been brevetted for conspicuous gallantry in action, and place him on the retired list of the Army with the rank and retired pay of one grade above that actually held by him at the time of his retirement from active service in the Regular Army. *Act of Mar. 4, 1915 (38 Stat. 1084).*

969b. *Same—Advancement of brigadier general on the retired list, with certain Civil War service, one grade.*—The President be, and he is hereby, authorized to appoint to the grade of major general on the retired list of the Army any brigadier general now borne on said

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list who served with credit in the Army throughout both the Civil War and the War with Spain, as well as during the interval between said wars, and who, being a general officer, exercised with efficiency and gallantry the command of a brigade or of a higher unit in action or in actual operations against an enemy, and who in consideration of services so rendered was recommended to be a major general, United States Volunteers, by the commanding general of the Army, as shown by the records of the War Department. *Act of Aug. 29, 1916 (39 Stat. 628).*

969c. *Same—Advancement of retired brigadier general who had certain Civil War service as senior colonel, and so forth.*—Any brigadier general on the retired list who as senior colonel commanded with credit a brigade or higher unit in the Civil War, though not so recommended, may be advanced in grade as authorized by this paragraph if he fulfills the other requirements thereof. *Id.*

969d. *Same—Advancement to grade of major general on retired list of retired officer who had certain Civil War service, etc.*—The President be, and he is hereby, authorized to appoint and place on the retired list of the Army with the rank of major general any officer on the retired list who served not less than one year in the Regular or Volunteer forces of the United States during the Civil War prior to April ninth, eighteen hundred and sixty-five, and who was honorably discharged therefrom, who has since served not less than forty years as a commissioned officer of the Regular Army, and who was the last Civil War veteran on the active list of the Army for over two years before retirement and had ranked every general officer on the active list in length of service when he retired. *Id.*

969e. *Same—Advancement of retired colonel one grade on retired list who had certain service in Indian campaigns, War with Spain, etc.*—The President be, and he is hereby, authorized to appoint any colonel of the Army on the retired list who before retirement served more than forty-five years and six months, including sixteen years in the line of the Army, who held command in the line or staff over nine and a half years, who received campaign badges for service in four Indian campaigns and in the War with Spain and the Philippine insurrection, and who was recommended by the commanding general in time of war or insurrection for appointment to the grade of general officer in the Volunteer Army, to the grade of brigadier general on the retired list: *Provided*, That such officer did not receive advanced grade upon retirement nor has since received any advance over the grade held at the date of retirement. *Id. 627.*

975a. *Retired officer assigned to active duty as post commander during movement of troops, pay and allowances of.*—When by reason of the movement of troops a post is temporarily left without its

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regular garrison and with no commissioned officer except of the Medical Reserve Corps on duty thereat, the Secretary of War may assign a retired officer of the Army, with his consent, to active duty in charge of such post. The officer so assigned shall perform the duties of commanding officer and also any necessary staff duties at such post, and shall, while in the performance of such duties, receive the full pay and allowances of his grade, subject to the limitations imposed by the Act of March second, nineteen hundred and five,[1] and the Act of June twelfth, nine hundred and six,[1] which limitations shall include the grades of brigadier general, major general, and lieutenant general. *Id. 627.*

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CHAPTER XXV.

BREVETS—UNIFORM AND TITLE OF EX-OFFICERS—MEDALS OF HONOR—CERTIFICATES OR MERIT—FOREIGN DECORATIONS.

	Par.
Uniform	1010a–1010f
Unlawful for unauthorized persons to wear, of Army, Navy, or Marine Corps	1010a
Same—Not applicable to certain organizations and persons	1010b
Same—Uniform for the National Guard, military societies, and instructors or members of cadet corps to bear distinctive mark or insignia	1010c
Same—Members of military societies, and instructors and members of cadet corps not to wear insignia of rank of officers of Army, etc	1010d
Same—Penalty for violation of provisions of section	1010e
Same—Provisions extended to Coast Guard	1010f
Medals of Honor	1013a–1014m
Authorization of, for noncommissioned officers and privates	1013a
Army and Navy Medal of Honor Roll	1014a–1014h
Establishment of, etc	1014a
Same—Duty of Secretary of War, etc., to carry Act into effect and issue certificates to applicants	1014b
Same—Special pension of $10 per month to each person whose name is placed on roll	1014c
Same—Date of beginning and continuation of	1014d
Same—To be additional to pension which beneficiary may receive under any other law	1014e
Same—Not subject to taxes or any civil process	1014f
Same—Holder of two or more medals entitled to but one special pension; rank in service not to be considered	1014g
Same—Allowances to be paid from appropriations for invalid pensions	1014h
Board to investigate awards of medals of honor	1014i–1014m
Composition of board, etc	1014i
Same—Name of recipient to be stricken from medal of honor list on finding of board	1014j
Misdemeanor for recipient to publicly wear or display medal after name is stricken from list	1014k
Board given access to records of War Department	1014l
Actual expenses of board payable from contingencies of Army for War Department	1014m

UNIFORM.

1010a. *Unlawful for unauthorized persons to wear, of Army, Navy, or Marine Corps.*—It shall be unlawful for any person not an officer or enlisted man of the United States Army, Navy, or Marine Corps

[1] See pars. 974 and 975.

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to wear the duly prescribed uniform of the United States Army, Navy, or Marine Corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States Army, Navy, or Marine Corps. *Sec. 125, Act of June 3, 1916 (39 Stat. 216).*

1010b. *Same—Not applicable to certain organizations and persons.*—The foregoing provision shall not be construed so as to prevent officers or enlisted men of the National Guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the National Guard; nor to prevent members of the organization known as the Boy Scouts of America, or the Naval Militia, or such other organizations as the Secretary of War may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States Army, Navy, or Marine Corps, Regular or Volunteer, and whose most recent service was terminated by an honorable discharge, muster out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such Regular or Volunteer service; nor to prevent any person who has been honorably discharged from the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing his uniform from the place of his discharge to his home, within three months after the date of such discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers or enlisted men, or both, of the United States Army, Navy, or Marine Corps, Regular or Volunteer, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by the members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of the duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States Army, Navy, or Marine Corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval au-

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thorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States Army, Navy, or Marine Corps in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States Army, Navy, or Marine Corps.[1] *Id.*

1010c. *Same—Uniform for the National Guard, military societies, and instructors or members of cadet corps to bear distinctive mark or insignia.*—The uniform worn by officers or enlisted men of the National Guard, or by the members of the military societies or the instructors and members of the cadet corps referred to in the preceding proviso shall include some distinctive mark or insignia to be prescribed by the Secretary of War to distinguish such uniforms from the uniforms of the United States Army, Navy, and Marine Corps. *Id. 217.*

1010d. *Same—Members of military societies and instructors and members of cadet corps not to wear insignia of rank of officers of Army, etc.*—The members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by officers of the United States Army, Navy, or Marine Corps, or any insignia of rank similar thereto. *Id.*

1010e. *Same—Penalty for violation of provisions of section.*—Any person who offends against the provisions of this section shall, on conviction, be punished by a fine not exceeding $300, or by imprisonment not exceeding six months, or by both such fine and imprisonment. *Id.*

1010f. *Same—Provisions extended to Coast Guard.*—Section one hundred and twenty-five of the Act entitled "An Act for further and more effectual provision for the national defense, and for other purposes," approved June third, nineteen hundred and sixteen, shall apply to the Coast Guard in the same manner as to the Army, Navy, and Marine Corps. *Act of Aug. 29, 1916 (39 Stat. 649).*

MEDALS OF HONOR.

1013a. *Authorization of for noncommissioned officers and privates.*—The President of the United States be, and he is hereby, authorized to cause two thousand "medals of honor" to be prepared

[1] *Held*, that, as the organizations that are expressly named as excepted are either military or quasi-military, and in view of the rule of associated words, it was the intention of Congress that the Secretary of War's authority to designate other organizations should be limited to those of a similar character, and that the Secretary of War is, therefore, not authorized to designate the Army Young Men's Christian Association as an organization exempt from the provisions of section 125 of the national-defense act. (War Dept. Bull. 3, Jan. 19, 1917.)

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with suitable emblematic devices, and to direct that the same be presented, in the name of Congress, to such noncommissioned officers and privates as shall most distinguish themselves by their gallantry in action, and other soldier-like qualities during the present insurrection. *Resolution No. 52 of July 12, 1862 (12 Stat. 623).*

ARMY AND NAVY MEDAL OF HONOR ROLL.

1014a. *Establishment of, etc.*—There is hereby established in the War Department and Navy Department, respectively, a roll designated as "the Army and Navy medal of honor roll." Upon written application made to the Secretary of the proper department, and subject to the conditions and requirements hereinafter conatined, the name of each surviving person who has served in the military or naval service of the United States in any war, who has attained or shall attain the age of sixty-five years, and who has been awarded a medal of honor for having in action involving actual conflict with an enemy distinguished himself conspicuously by gallantry or intrepidity, at the risk of his life, above and beyond the call of duty, and who was honorably discharged from service by muster out, resignation, or otherwise, shall be, by the Secretary of the proper department, entered and recorded on said roll. Applications for entry on said roll shall be made in such form and under such regulations as shall be prescribed by the War Department and Navy Department, respectively, and proper blanks and instructions shall be, by the proper Secretary, furnished without charge upon request made by any person claiming the benefits of this Act. *Sec. 1, Act of Apr. 27, 1916 (39 Stat. 53).*

1014b. *Same—Duty of Secretary of War, etc., to carry Act into effect and issue certificates to applicants.*—It shall be the duty of the Secretary of War and of the Secretary of the Navy to carry this Act into effect and to decide whether each applicant, under this Act, in his department is entitled to the benefit of this Act. If the official award of the medal of honor to the applicant, or the official notice to him thereof, shall appear to show that the medal of honor was awarded to the applicant for such an act as is required by the provisions of this Act, it shall be deemed sufficient to entitle the applicant to such special pension without further investigation. Otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence now on file in any public office or department shall be considered. A certificate of service and of the act of heroism, gallantry, bravery, or intrepidity for which the medal of honor was awarded, and of enrollment under this Act, and of the right of the special pensioner to be entitled to and to receive the special pension herein granted, shall be furnished each person whose

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name shall be so entered on said roll. The Secretary of War and the Secretary of the Navy shall deliver to the Commissioner of Pensions a certified copy of each of such of said certificates as he may issue, as aforesaid, and the same shall be full and sufficient authority to the Commissioner of Pensions for the payment by him to the beneficiary named in each such certificate the special pension herein provided for. *Sec. 2, id. 54.*

1104c. *Same—Special pension of $10 per month to each person whose name is placed on roll.*—Each such surviving person whose name shall have been entered on said roll in accordance with this Act shall be entitled to and shall receive and be paid by the Commissioner of Pensions in the Department of the Interior, out of any moneys in the Treasury of the United States not otherwise appropriated, a special pension of $10 per month for life, payable quarter yearly. The Commissioner of Pensions shall make all necessary rules and regulations for making payment of such special pensions to the beneficiaries thereof. *Sec. 3, id.*

1014d. *Same—Date of beginning and continuation of.*—Such special pension shall begin on the day that such person shall file his application for enrollment on said roll in the office of the Secretary of War or of the Secretary of the Navy after the passage and approval of this Act, and shall continue during the life of the beneficiary. *Id.*

1014e. *Same—To be additional to pension which beneficiary may receive under any other law.*—Such special pension shall not deprive any such special pensioner of any other pension or of any benefit, right, or privilege to which he is or may hereafter be entitled under any existing or subsequent law, but shall be in addition thereto. *Id.*

1014f. *Same—Not subject to taxes or any civil process.*—The special pension allowed under this Act shall not be subject to any attachment, execution, levy, tax, lien, or detention under any process whatever. *Id.*

1014g. *Same—Holder of two or more medals entitled to but one special pension; rank in service not to be considered.*—In case any person has been awarded two or more medals of honor, he shall not be entitled to and shall not receive more than one such special pension.

Rank in the service shall not be considered in applications filed hereunder. *Sec. 4, id.*

1014h. *Same—Allowances to be paid from appropriations for invalid pensions.*—All allowances made, or hereafter to be made, to medal of honor pensioners under the Act of Congress approved April twenty-seventh, nineteen hundred and sixteen, shall be paid from the moneys appropriated for the payment of invalid and other

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pensions, and section three of the said Act of April twenty-seventh, nineteen hundred and sixteen, is amended accordingly. *Act of June 30, 1916 (39 Stat. 242).*

BOARD TO INVESTIGATE AWARDS OF MEDALS OF HONOR.

1014i. *Composition of board, etc.*—A board to consist of five general officers on the retired list of the Army shall be convened by the Secretary of War, within sixty days after the approval of this Act, for the purpose of investigating and reporting upon past awards or issues of the so-called congressional medal of honor by or through the War Department; this with a view to ascertain what medals of honor, if any, have been awarded or issued for any cause other than distinguished conduct by an officer or enlisted man in action involving actual conflict with an enemy by such officer or enlisted man or by troops with which he was serving at the time of such action. *Sec. 122, Act of June 3, 1916 (39 Stat. 214).*

1014j. *Same—Name of recipient to be stricken from medal of honor list on finding of board.*—And in any case in which said board shall find and report that said medal was issued for any cause other than that hereinbefore specified the name of the recipient of the medal so issued shall be stricken permanently from the official medal of honor list. *Id.*

1014k. *Misdemeanor for recipient to publicly wear or display medal after name is stricken from list.*—It shall be a misdemeanor for him to wear or publicly display said medal, and, if he shall still be in the Army, he shall be required to return said medal to the War Department for cancellation. *Id.*

1014l. *Board given access to records of War Department.*—Said board shall have full and free access to and use of all records pertaining to the award or issue of medals of honor by or through the War Department. *Id.*

1014m. *Actual expenses of board payable from contingencies of Army for War Department.*—The actual and necessary expenses of said board and its members shall be paid out of any appropriations available for contingent expenses of the Army of the War Department. *Id.*

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CHAPTER XXVI.

ENLISTED MEN.

	Par.
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1028a. *Enlistment of minors.*—No person under the age of eighteen years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians, provided that such minor has such parents or guardians entitled to his custody and control. *Sec. 27, Act of June 3, 1916 (39 Stat. 186).*

(For the provisions of this section preceding this paragraph, see pars. 1031a, 1031b, 1031c, 1031d, and 1034a, and for ensuing provision see par. 1032a.)

1031a. *Enlistment, term of.*—On and after the first day of November, nineteen hundred and sixteen, all enlistments in the Regular

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Army shall be for a term of seven years, the first three years to be in the active service with the organizations of which those enlisted form a part and, except as otherwise provided herein, the last four years in the Regular Army Reserve hereinafter provided for. *Id.*

(See par. 1031h, post, for provision that all enlistments in the Regular Army and in the Regular Army Reserve in force on date of outbreak of war shall continue for one year, but nothing in the proviso shall shorten the term of enlistment prescribed.)

1031b. *Same—Reenlistment after three years' continuous service.*—At the expiration of three years' continuous service with such organizations, either under a first or any subsequent enlistment, any soldier may be reenlisted for another period of seven years, as above provided for, in which event he shall receive his final discharge from his prior enlistment. *Id. 185.*

1031c. *Same—May be furloughed to Regular Army Reserve after one year's honorable service.*—After the expiration of one year's honorable service any enlisted man serving within the continental limits of the United States whose company, troop, battery, or detachment commander shall report him as proficient and sufficiently trained may, in the discretion of the Secretary of War, be furloughed to the Regular Army Reserve under such regulations as the Secretary of War may prescribe, but no man furloughed to the reserve shall be eligible to reenlist in the service until the expiration of his term of seven years. *Id. 187.*

1031d. *Same—Three years to be counted as enlistment period in computing continuous-service pay.*—In all enlistments hereafter accomplished under the provisions of this Act three years shall be counted as an enlistment period in computing continuous-service pay. *Id.*

(For ensuing provision of this section, see par. 1034a.)

1031e. *Final discharge issued at expiration of seven years, but account closed on furlough to Regular Army Reserve.*—No enlisted man in the Regular Army shall receive his final discharge until the termination of his seven-year term of enlistment except upon reenlistment as provided for in this Act or as provided by law for discharge prior to expiration of term of enlistment, but when an enlisted man is furloughed to the Regular Army Reserve his account shall be closed and he shall be paid in full to the date such furlough becomes effective, including allowances provided by law for discharged soldiers. *Sec. 29, id.*

(For ensuing provision of this section see paragraph 1044a.)

REGULAR ARMY RESERVE.

1031f. *Composition of.*—The Regular Army Reserve shall consist of, first, all enlisted men now in the Army Reserve or who shall

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hereafter become members of the Army Reserve under the provisions of existing law; second, all enlisted men furloughed to or enlisted in the Regular Army Reserve under the provisions of this Act; and, third, any person holding an honorable discharge from the Regular Army with character reported at least good who is physically qualified for the duties of a soldier and not over forty-five years of age who enlists in the Regular Army Reserve for a period of four years. *Sec. 30, id.*

1031g. *Same—Organization, training, mobilization, pay, etc., of.*—The President is authorized to assign members of the Regular Army Reserve as reserves to particular organizations of the Regular Army or to organize the Regular Army Reserve, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe, and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps herein provided for; and he may summon the Regular Army Reserve or any part thereof for field training for a period not exceeding fifteen days in each year, the reservists to receive travel expenses and pay at the rate of their respective grades in the Regular Army during such periods of training; and in the event of actual or threatened hostilities he may mobilize the Regular Army Reserve in such manner as he may determine, and thereafter retain it, or any part thereof, in active service for such period as he may determine the conditions demand.[1] *Sec. 31, id.*

1031h. *Enlistments in the Regular Army and in, in force at outbreak of war to continue for one year.*—All enlistments in the Regu-

[1] *Held*, that the law contemplates that the President may cause reservists to be organized at all times in the manner indicated and that, in the discretion of the President, they may be attached as such to organizations of the Regular Army that are at maximum strength, but when so attached they are not constituent parts of such organizations and form no part of the numbers authorized by law for such organizations. (War Depart. Bull. 34, Sept. 12, 1916.)

Held, that when so assigned, reservists are eligible for promotion as other members of the organizations who are serving in the active period of their enlistment. (War Depart. Bull. 39, Oct. 6, 1916.)

Held as follows:

(*a*) Under the statute a reservist is entitled to active duty pay and allowances from the time he reports in person in response to a mobilization order until the time he is actually excused.

(*b*) As to whether clothing is an allowance to which a reservist is entitled under the circumstances stated, depends upon whether he actually avails himself of such allowance. Clothing is essentially an allowance in kind, furnished for use of enlisted men when they are accepted for actual service, and is commuted to a money value merely for convenience. Therefore, until a reservist is examined and found physically fit for service, and accepted for service, he is not entitled to any clothing allowance. After he is accepted for service he is entitled to draw clothing against his clothing allowance, but if he is excused before drawing clothing against his allowance he should not be credited with any such allowance.

(*c*) A reservist who, in obedience to a summons, reports at the designated place and is found physically qualified complies with the statute and his right to mobilization pay becomes vested and the same should be paid. (War Depart. Bull. 47, Nov. 16, 1916.)

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lar Army, including those in the Regular Army Reserve, which are in force on the date of the outbreak of war shall continue in force for one year, unless sooner terminated by order of the Secretary of War, but nothing herein shall be construed to shorten the time of enlistment prescribed. *Id.*

(See paragraph 1031a as to term of enlistment.)

1031i. *Annual rate of pay for members of.*—Subject to such regulations as the President may prescribe for their proper identification, and location, and physical condition, the members of the Regular Army Reserve shall be paid semiannually at the rate of $24 a year while in the reserve. *Id. 188.*

1031j. *Same—Active service pay.*—When mobilized by order of the President, the members of the Regular Army Reserve shall, so long as they may remain in active service, receive the pay and allowances of enlisted men of the Regular Army of like grades. *Sec. 32, id. 188.*

1031k. *Same—Continuous service pay during active service.*—Any enlisted man who shall have reenlitsed in the Regular Army Reserve shall receive during such active service the additional pay now provided by law for enlisted men in his arm of the service in the second enlistment period. *Id.*

(See par. 708, ante, for rates of continuous-service pay to enlisted men of Regular Army.)

1031l. *Bounty of reservists upon reporting for active duty if physically qualified.*—Upon reporting for duty, and being found physically fit for service, members of the Regular Army Reserve shall receive a sum equal to $3 per month for each month during which they shall have belonged to the reserve, as well as the actual necessary cost of transportation and subsistence from their homes to the places at which they may be ordered to report for duty under such summons. *Id.*

1031m. *Service in, confers no right to retirement or retired pay; pensionable status.*—Service in the Regular Army Reserve shall confer no right to retirement or retired pay, and members of the Regular Army Reserve shall become entitled to pension only through disability incurred while on active duty in the service of the United States. *Id.*

1031n. *Use of other Government departments for paying, mobilizing, etc., reserve organizations.*—The President may, subject to such rules and regulations as in his judgment may be necessary, utilize the services of members and employees of all departments of the Government of the United States, without expense to the individual reservist, for keeping in touch with, paying, and mobilizing the Regular Army Reserve, the Enlisted Reserve Corps, and other reserve organizations. *Sec. 33, id. 188.*

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1031o. *Bounty for reenlistment in time of war of certain honorably discharged men as an auxiliary to.*—For the purpose of utilizing as an auxiliary to the Regular Army Reserves the services of men who have had experience and training in the Regular Army, or in the United States Volunteers, outside of the continental limits of the United States, in time of actual or threatened hostilities, and after the President shall, by proclamation, have called upon honorably discharged soldiers of the Regular Army to present themselves for reenlistment therein within a specified period, subject to such conditions as may be prescribed, any person who shall have been discharged honorably from said Army, with character reported as at least good, and who, having been found physically qualified for the duties of a soldier, if not over fifty years of age, shall reenlist in the line of said Army, or in the Signal, Quartermaster, or Medical Department thereof, within the period that shall be specified in said proclamation, shall receive on so reenlisting a bounty which shall be computed at the rate of $8 for each month for the first year of the period that shall have elapsed since his last discharge from the Regular Army and the date of his reenlistment therein under the terms of said proclamation; at the rate of $6 per month for the second year of such period; at the rate of $4 per month for the third year of such period; and at the rate of $2 per month for any subsequent year of such period; but no bounty in excess of $300 shall be paid to any person under the terms of this section. *Sec. 34, id.*

1032a. *Premium for recruits may be paid to third and fourth class postmasters for securing.*—The President is authorized in his discretion to utilize the services of postmasters of the second, third, and fourth classes in procuring the enlistment of recruits for the Army, and for each recruit accepted for enlistment in the Army the postmaster procuring his enlistment shall receive the sum of $5. *Sec. 27, id. 186.*

(For the provision of this section immediately preceding this paragraph see paragraph 1028a, and for the ensuing provisions see paragraphs 1293a and 1293b.)

1034a. *Reenlistment of noncommissioned officer within twenty days with rank of discharge.*—Any noncommissioned officer discharged with an excellent character shall be permitted, at the expiration of three years in the active service, to reenlist in the organization from which discharged with the rank and grade held by him at the time of his discharge if he reenlists within twenty days after the date of such discharge. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 1031d, and for the ensuing provision see paragraph 1028a.)

1043a. *Discharge by purchase may be final or by furlough to Regular Army Reserve.*—When an enlisted man is discharged by purchase

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while in active service he shall be furloughed to the Regular Army Reserve, unless, in the discretion of the Secretary of War, he is given a final discharge from the Army. *Sec. 29 Id. 187.*

(For the provision of this section immediately preceding this paragraph see paragraph 1044a.)

1044a. *Discharge or furlough to Regular Army Reserve on account of dependency of member of family.*—When by reason of death or disability of a member of the family of an enlisted man occurring after his enlistment members of his family become dependent upon him for support, he may, in the discretion of the Secretary of War, be discharged from the service of the United States or be furloughed to the Regular Army Reserve, upon due proof being made of such condition.[1] *Id.*

(For the preceding provision of this section see paragraph 1031e, and for the ensuing provision see paragraph 1043a.)

1045a. *Travel allowance of enlisted men on discharge.*—On and after July first, nineteen hundred and sixteen, an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive 3½ cents per mile from the place of his discharge to the place of his acceptance for enlistment, enrollment, or original muster into the service, at his option.[2] *Sec. 126, Id. 127.*

(For the ensuing provision of this section see paragraph 1046a.)

1045b. *Same—Applies to enlisted men of National Guard on discharge from United States.*—Nothing contained in the Act making appropriations for the support of the Army for the fiscal year nineteen hundred and seventeen shall be construed as precluding the payment of travel allowance as provided in section one hundred and twenty-six of the Act approved June third, nineteen hundred and

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[1] *Held*, that this provision is applicable to all discharges by purchase issued on and after the date of the approval of the act, irrespective of the time when the soldier enlisted.

Held, that this provision as a whole is inapplicable to the National Guard, in view of the alternative of furloughing the soldier "to the Regular Army Reserve," and that its terms indicate that it was intended to apply only to the Regular Army. (War Dept. Bull. 18, July 8, 1916).

Held, that this provision repeals section 30 of the act of February 2, 1901 (31 Stat., 756), which authorized the discharge only upon the death of a dependent parent and after one year's service. (War Dept. Bull. 28, Aug. 18, 1916.)

[2] *Held*, that the Act of August 24, 1912 (37 Stat. 575), providing for transportation and subsistence in kind for enlisted men on their discharge, or, in lieu thereof, 2 cents a mile, at the election of the soldier, was repealed by the Act of June 3, 1916, and that on and after July 1, 1916, the payment of travel pay to enlisted men of the Army on discharge will be governed by the Acts of June 12, 1906 (34 Stat. 247), and June 3, 1916. The Act of June 12, 1906, referred to provides:

"For the purpose of determining allowances for all travel under orders, or for officers and enlisted men on discharge, travel in the Philippine Archipelago, the Hawaiian Archipelago, the home waters of the United States, and between the United States and Alaska shall not be regarded as sea travel and shall be

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sixteen, to enlisted men of the National Guard on their discharge from the service of the United States, and the appropriation for the transportation of the Army and its supplies for the fiscal year nineteen hundred and seventeen shall be available for this purpose and also for the purpose of paying travel pay to officers of the National Guard on their discharge from the service of the United States, as prescribed in the Act approved March second, nineteen hundred and one. *Act of Sept. 8, 1916 (39 Stat. 810).*

1046a. *Sea travel on discharge.*—For sea travel on discharge transportation and subsistence only shall be furnished to enlisted men. *Sec. 126, Act of June 3, 1916 (39 Stat. 217).*

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paid for at rates established by law for land travel within the boundaries of the United States."

Question (*a*) accordingly answered in the affirmative.

Held, as to question (*b*) that the language "at his option" in section 126 of the national defense Act has operation only with reference to the preceding words "enrollment" or "original muster into the service"; that as these terms are not properly applicable to enlisted men of the Regular Army, such enlisted men on discharge are entitled to travel allowances only to the place of their acceptance for enlistment, i. e., the place of initial acceptance, it being the purpose of the Act to return a man to the place from which he was taken by the Government. As to enlisted men of volunteer or militia organizations to which the terms "enrollment" or "muster into the service" may apply, they may exercise an option. If a man enters the military service as a part of a recognized organization which has been enrolled for the purpose of becoming a part of the Army, and such organization is mustered into the service at a different place from that where the members were enrolled, he may, upon discharge or muster out, be allowed travel to the place of his enrollment or to the place of his muster in, as he may elect, or, in the language of the statute "at his option." Answering question (*b*) specifically, an enlisted man of the Regular Army is entitled to travel pay only to the place of his acceptance for enlistment.

(Comp. W. W. Warwick. June 26, 1916. War Dept. Bull. 18, July 8, 1916.)

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CHAPTER XXVII.

THE TROOPS OF THE LINE.

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CAVALRY.

1071a. *Composition and organization of regiment.*—Each regiment of Cavalry shall consist of one colonel, one lieutenant colonel, three majors, fifteen captains, sixteen first lieutenants, sixteen second lieutenants, one headquarters troop, one machine-gun troop, one supply troop, and twelve troops organized into three squadrons of four troops each. *Sec. 18, Act of June 3, 1916 (39 Stat. 178).*

(See paragraph 929i for increase of seventeen colonels of Cavalry and four colonels of Infantry to equalize inequalities in past promotions of officers of the line of the Army. See, also, paragraph 935a, ante, for authorization for transfer and promotion or transfer without promotion from one arm of the service to another, in order to lessen inequalities in promotion due to increase in number of officers of line of the Army.)

1074a. *Composition of squadrons and troops.*—Each squadron shall consist of one major, one first lieutenant (squadron adjutant), and four troops. Each troop in squadron shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one mess sergeant, one supply sergeant, one stable sergeant, five sergeants, eight corporals, two cooks, two horseshoers, one saddler, two buglers, ten privates (first class), and thirty-six privates.[1] *Id.*

(For authorization for 1,000 additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property; and the similar detail of 100 additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

1074b. *Composition of headquarters troops.*—Each headquarters troop shall consist of one captain (regimental adjutant), one regimental sergeant major, three squadron sergeants major, one first sergeant (drum major), two color sergeants, one mess sergeant, one supply sergeant, one stable sergeant, one sergeant, two cooks, one horseshoer, one saddler, two privates (first class), and nine privates, one band leader, one assistant band leader, one sergeant bugler, two band sergeants, four band corporals, two musicians (first class), four musicians (second class), and thirteen musicians (third class).[2] *Id.*

1074c. *Composition of machine-gun troops.*—Each machine-gun troop shall consist of one captain, one first lieutenant, two second

[1] *Held,* that the national-defense act by not including farriers in the composition prescribed for Cavalry units abolished that grade with the result that enlisted men holding the grade of farrier reverted to the grade of private and will continue to serve as such unless they are appointed to some grade authorized by the national-defense act. (War Dept. Bull. 34, Sept. 12, 1916.)

[2] *Held,* that service of a commissioned officer in command of such a headquarters company or troop constitutes service "with a troop, battery, or company," within the purview of the detached-service act of 1912. (War Dept. Bull. 39, Oct. 6, 1916.)

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lieutenants, one first sergeant, one mess sergeant, one supply sergeant, one stable sergeant, two horseshoers, five sergeants, six corporals, two cooks, one mechanic, one saddler, two buglers, twelve privates (first class), and thirty-five privates. *Id.*

1074d. *Composition of supply troops.*—Each supply troop shall consist of one captain (regimental supply officer), two second lieutenants, three regimental supply sergeants, one first sergeant, one mess sergeant, one stable sergeant, one corporal, one cook, one horseshoer, one saddler, and one wagoner for each authorized wagon of the field and combat train. *Id. 179.*

(For the next ensuing provision of this section see paragraph 1075a.)

1074e. *Commissioned officers for troop organizations to be assigned from officers authorized.*—The commissioned officers required for the Cavalry headquarters, supply, and machine-gun troops, and for the troops organized into squadrons, shall be assigned from those hereinbefore authorized. *Id.*

(For the provision of this section immediately preceding this paragraph see 1075a.)

1075a. *Increase of noncommissioned officers and privates.*—The President may, in his discretion, increase each troop of Cavalry by ten privates (first class) and twenty-five privates; the headquarters troop by two sergeants, five corporals, one horseshoer, five privates (first class), and eighteen privates; each machine-gun troop by three sergeants, two corporals, one mechanic, one private (first class), and fourteen privates; each supply troop by one corporal, one cook, one saddler, and one horseshoer. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 1074d, and for the ensuing provision see paragraph 1074e.)

1083a. *Subscriptions for newspapers and periodicals under Chief of Coast Artillery.*—Section thirty-six hundred and forty-eight, Revised Statutes, shall not apply to subscriptions for foreign and professional newspapers and periodicals to be paid for from this appropriation. *Act of Mar. 4, 1915 (38 Stat. 1063.)*

1084a. *Officers retired before separation of Field and Coast Artillery to be regarded as having belonged to Field Artillery.*—In determining the rights of officers in the last proviso of section twenty-four[1] of said national-defense Act, officers retired before the separation of the Field Artillery from the Coast Artillery shall be regarded as having belonged to the Field Artillery. *Act of Aug. 29, 1916 (39 Stat. 623).*

(For provisions of this chapter relating to the Field Artillery see paragraph 1090a–1091f.)

[1] See paragraph 958f for the provision referred to.

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COAST ARTILLERY CORPS.

1086a. *Composition of.*—The Coast Artillery Corps shall consist of one Chief of Coast Artillery, with the rank of brigadier general; twenty-four colonels; twenty-four lieutenant colonels; seventy-two majors; three hundred and sixty captains; three hundred and sixty first lieutenants; three hundred and sixty second lieutenants; thirty-one sergeants major, senior grade; sixty-four sergeants major, junior grade; forty-one master electricians; seventy-two engineers; ninety-nine electrician sergeants, first class; two hundred and seventy-five assistant engineers; ninety-nine electrician sergeants, second class; one hundred and six firemen; ninety-three radio sergeants; sixty-two master gunners; two hundred and sixty-three first sergeants; two hundred and sixty-three supply sergeants; two hundred and sixty-three mess sergeants; two thousand one hundred and four sergeants; three thousand one hundred and fifty-six corporals; five hundred and twenty-six cooks; five hundred and twenty-six mechanics; five hundred and twenty-six buglers; five thousand two hundred and twenty-five privates, first class; fifteen thousand six hundred and seventy-five privates; and eighteen bands, organized as hereinbefore provided for the Engineer Band.[1] *Sec. 20, Act of June 3, 1916 (39 Stat. 180).*

(For authorization for 1,000 additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property; and the similar detail of 100 additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

1086b. *Same—Composition and number of rated men; pay of coxswains.*—The rated men of the Coast Artillery Corps shall consist of casemate electricians; observers, first class; plotters; chief planters; coxswains; chief loaders; observers, second class; gun commanders and gun pointers. The total number of rated men shall not exceed one thousand seven hundred and eighty-four. Coxswains shall receive $9 per month in addition to the pay of their grade. *Id.*

1086c. *Chief of Coast Artillery to have rank of major general.*—Hereafter the Chief of Coast Artillery shall have the rank, pay, and allowances of a major general. *Act of July 6, 1916 (39 Stat. 349).*

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[1] For composition of the Engineer Band see paragraph 792, ante.

Held, that the effect of the provision quoted from section 28 is only to prevent the reduction in the pay of grades and has no application where a grade is abolished and a new grade created in lieu thereof, as in the present case, and that, therefore, the band corporal who was reduced from a principal musician, could not, while he held the position of band corporal, receive more as base pay than that prescribed by the statute for that grade. (War Dept. Bull. 39, Oct. 6, 1916.)

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FIELD ARTILLERY.

1090a. *Composition and organization of.*—The Field Artillery, including mountain artillery, light artillery, horse artillery, heavy artillery (field and siege types), shall consist of one hundred and twenty-six gun or howitzer batteries organized into twenty-one regiments. *Sec. 19, Act of June 3, 1916 (39 Stat. 179).*

(For provision that certain officers retired before the separation of the Field Artillery from the Coast Artillery shall be regarded as having belonged to the Field Artillery in determining their rights, see paragraph 1084a, ante.)

1090b. *Organization of ammunition and depot batteries and battalions and artillery parks in time of actual or threatened hostilities.*—In time of actual or threatened hostilities the President is authorized to organize such number of ammunition batteries and battalions, depot batteries and battalions, and such artillery parks, with such number and grades of personnel and such organizations as he may deem necessary. The officers necessary for such organization shall be supplied from the Officers' Reserve Corps provided by this Act and by temporary appointment, as authorized by section eight of the Act of Congress approved April twenty-fifth, nineteen hundred and fourteen.[1] The enlisted men necessary for such organizations shall be supplied from the Regular Army Reserve provided by this Act or from the Regular Army. *Id.*

1090c. *Composition of regiment.*—Each regiment of Field Artillery shall consist of one colonel, one lieutenant colonel, one captain, one headquarters company, one supply company, and such number of gun and howitzer battalions as the President may direct. Nothing shall prevent the assembling, in the same regiment, of gun and howitzer battalions of different calibers and classes. *Id.*

1091a. *Composition of gun or howitzer battery.*—Each gun or howitzer battery shall consist of one captain, two first lieutenants, two second lieutenants, one first sergeant, one supply sergeant, one stable sergeant, one mess sergeant, six sergeants, thirteen corporals, one chief mechanic, one saddler, two horseshoers, one mechanic, two buglers, three cooks, twenty-two privates (first class), and seventy-one privates. *Id.*

(For authorization for 1,000 additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property; and the similar detail of 100 additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

1091b. *Same—Packmaster, assistant, and cargador for mountain battery in absence of enlisted men of Quartermaster Corps for such*

[1] See chapter entitled "Volunteers," paragraph 1389, or 38 Stat. 349.

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positions.—When no enlisted men of the Quartermaster Corps are attached for such positions there shall be added to each battery of mountain artillery one packmaster (sergeant, first class), one assistant packmaster (sergeant), and one cargador (corporal).[1] *Id.*

1091c. *Composition of headquarters company in regiment of two battalions.*—Each headquarters company of a regiment of two battalions shall consist of one captain, one first lieutenant, one regimental sergeant major, two battalion sergeants major, one first sergeant, two color sergeants, one mess sergeant, one supply sergeant, one stable sergeant, two sergeants, nine corporals, one horseshoer, one saddler, one mechanic, three buglers, two cooks, five privates (first class), fifteen privates, one band leader, one assistant band leader, one sergeant bugler, two band sergeants, four band corporals, two musicians (first class), four musicians (second class), and thirteen musicians (third class).[2] *Id.*

1091d. *Same—Regiment of three battalions.*—When a regiment consists of three battalions there shall be added to the headquarters company one battalion sergeant major, one sergeant, three corporals, one bugler, one private (first class), and five privates. When no enlisted men of the Quartermaster Corps are attached for such positions, there shall be added to each mountain artillery headquarters company one packmaster (sergeant, first class), one assistant packmaster (sergeant), and one cargador (corporal).[2] *Id.*

1091e. *Composition of supply company in regiment of two battalions.*—Each supply company of a regiment of two battalions shall consist of one captain, one first lieutenant, two regimental supply sergeants, one first sergeant, one mess sergeant, one corporal, one

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[1] *Held*, that it is clearly the intent of the statute that said rates in the Quartermaster Corps shall apply to enlisted men occupying the positions of packmaster, assistant packmaster, and cargador, respectively, whether the men are assigned from the Quartermaster Corps or are "added" as provided by the act. (War Dept. Bull. 28, Aug. 18, 1916.)

[2] *Held*, that service of a commissioned officer in command of such a headquarters company or troop constitutes service "with a troop, battery, or company," within the purview of the detached-service act of 1912. (War Dept. Bull. 39, Oct. 6, 1916.)

The question was presented whether a regimental adjutant of Field Artillery is to be deemed present for duty with a troop, battery, or company, within the meaning of the detached-service act of Aug. 24, 1912.

Held, as follows: As to a regiment of Infantry, it has been held that the adjutant thereof is on duty "with a troop, battery, or company" within the purview of the detached-service law, because he is in command of the headquarters company. (Bull. 39, W. D., 1916, p. 12.) While the national-defense act provides that a regimental adjutant of Infantry or Cavalry shall command the headquarters company or headquarters troop, as the case may be, this is not so as to the adjutant of a Field Artillery regiment. He does not command the headquarters company, the supply company, nor any battery in the regiment, other captains having been provided as component parts of those organizations for that purpose. (Sec. 19, national-defense act.) A regimental adjutant of Field Artillery is, therefore, an additional officer, and he is not, so long as he occupies his normal status as adjutant, on duty with a troop, battery, or company, within the meaning of the detached-service act of 1912. (War Dept. Bull. 3, Jan. 19, 1917.)

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cook, one horseshoer, one saddler, two privates, and one wagoner for each authorized wagon of the field train. *Id. 180.*

1091f. *Same—Regiment of three battalions.*—When a regiment consists of three battalions there shall be added to the supply company one second lieutenant, one regimental supply sergeant, one private, and one wagoner for each additional authorized wagon of the field train. *Id.*

1091g. *Composition of gun or howitzer battalions.*—Each gun or howitzer battalion shall consist of one major, one captain, and batteries as follows: Mountain artillery battalions and light artillery gun or howitzer battalions serving with the field artillery of Infantry divisions shall contain three batteries; horse artillery battalions and heavy field artillery gun or howitzer battalions shall contain two batteries. *Id.*

1091h. *Increase of noncommissioned officers and privates for headquarters and supply companies of regiments of two and three battalions.*—The President may, in his discretion, increase the headquarters company of a regiment of two battalions by two sergeants, five corporals, one horseshoer, one mechanic, one private (first class), and six privates; the headquarters company of a regiment of three battalions by one sergeant, seven corporals, one horseshoer, one mechanic, two cooks, two privates (first class), and seven privates; the supply company of a regiment of two battalions by one corporal, one cook, one horseshoer, and one saddler; the supply company for a regiment of three battalions by one corporal, one cook, one horseshoer, and one saddler; a gun or howitzer battery by three sergeants, seven corporals, one horseshoer, two mechanics, one bugler, thirteen privates (first class), and thirty-seven privates. *Id.*

INFANTRY.

1095a. *Composition and organization of regiment.*—Each regiment of Infantry shall consist of one colonel, one lieutenant colonel, three majors, fifteen captains, sixteen first lieutenants, fifteen second lieutenants, one headquarters company, one machine-gun company, one supply company, and twelve Infantry companies organized into three battalions of four companies each. *Sec. 17, act of June 3, 1916 (39 Stat. 177).*

(See paragraph 929i, ante, for increase of 17 colonels of Cavalry and 4 colonels of Infantry to equalize inequalities in past promotions of officers of the line of the Army. See also paragraph 935a, ante, for authorization for transfer and promotion or transfer without promotion from one arm of the service to another, in order to lessen inequalities in promotion due to increase in number of officers of line of the Army.)

1095b. *Composition of battalion and company.*—Each battalion shall consist of one major, one first lieutenant, mounted (battalion

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adjutant), and four companies. Each Infantry company in battalion shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one mess sergeant, one supply sergeant, six sergeants, eleven corporals, two cooks, two buglers, one mechanic, nineteen privates (first class), and fifty-six privates. *Id. 178.*

(For authorization for 1,000 additional sergeants for detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army, with corresponding organizations of the National Guard, to assist in the instruction of its personnel and the care of property; and the similar detail of 100 additional sergeants with the disciplinary organizations at the United States Disciplinary Barracks, see paragraph 1332a.)

1097a. *Composition of headquarters company.*—Each Infantry headquarters company shall consist of one captain, mounted (regimental adjutant); one regimental sergeant major, mounted; three battalion sergeants major, mounted; one first sergeant (drum major); two color sergeants; one mess sergeant; one supply sergeant; one stable sergeant; one sergeant; two cooks; one horseshoer; one band leader; one assistant band leader; one sergeant bugler; two band sergeants; four band corporals; two musicians, first class; four musicians, second class; thirteen musicians, third class; four privates, first class, mounted; and twelve privates, mounted.[1] *Id.*

1097b. *Composition of machine-gun company.*—Each Infantry machine-gun company shall consist of one captain, mounted; one first lieutenant, mounted; two second lieutenants, mounted; one first sergeant, mounted; one mess sergeant; one supply sergeant, mounted; one stable sergeant, mounted; one horseshoer; five sergeants; six corporals; two cooks; two buglers; one mechanic; eight privates, first class; and twenty-four privates. *Id.*

1097c. *Composition of supply company.*—Each Infantry supply company shall consist of one captain, mounted; one second lieutenant, mounted; three regimental supply sergeants, mounted; one first sergeant, mounted; one mess sergeant; one stable sergeant; one corporal, mounted; one cook; one saddler; one horseshoer; and one wagoner for each authorized wagon of the field and combat train. *Id.*

(For the ensuing provision of this section see paragraph 1098a.)

1097d. *Commissioned officers for company organizations to be assigned from officers authorized.*—The commissioned officers required for the Infantry headquarters, supply, and machine-gun companies and for the companies organized into battalions shall be assigned from those hereinbefore authorized. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 1098a.)

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[1] *Held*, that service of a commissioned officer in command of such a headquarters company or troop constitutes service "with a troop, battery, or company," within the purview of the detached-service act of 1912. (War Dept. Bull. 39, Oct. 6, 1916.)

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1098a. *Increase in noncommissioned officers and privates in companies of.*—The President may in his discretion increase a company of Infantry by two sergeants, six corporals, one cook, one mechanic, nine privates (first class), and thirty-one privates; an Infantry machine-gun company by two sergeants, two corporals, one machanic, four privates (first class), and twelve privates. *Id.*

(For the provision of this section immediately preceding this paragraph see paragraph 1097c, and for ensuing provision see paragraph 1097d.)

1098a. *Infantry band organization at recruiting depots.*—Hereafter one of the companies at each recruiting depot shall have the organization of an Infantry band, to which recruits showing an aptitude for music may be attached for examination and instruction before assignment to organizations in the Army. *Act of Mar. 3, 1909* (*35 Stat. 745*).

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CHAPTER XXVIII.

THE UNITED STATES MILITARY ACADEMY—THE ARMY WAR COLLEGE—THE SERVICE SCHOOLS.

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THE MILITARY ACADEMY.

1106a. *Existing laws relating to the Military Academy, officers and enlisted men on retired list, detached and additional officers, etc.*—All existing laws pertaining to or affecting the United States Military Academy and civilian or military personnel on duty thereat in any capacity whatever, the officers and enlisted men on the retired list, the detached and additional officers under the Act of Congress approved March third, nineteen hundred and eleven, recruiting parties, recruit depots and unassigned recruits, service school detachments, United States disciplinary barracks guards, disciplinary organizations, the Philippine Scouts, and Indian scouts shall continue and remain in force except as herein specifically provided otherwise. *Sec. 22, Act of June 3, 1916 (39 Stat. 181).*

1108a. *Vacancies, how filled.*—The President of the United States be authorized to fill any vacancy occurring at said academy by reason of death, or other cause, of any person appointed by him. *Act of Mar. 3, 1875 (18 Stat. 467).*

1108b. *Officer of Army holding position of professor, with certain service, to have rank, pay, etc., of colonel.*—Any officer of the United States Army now holding the position of permanent professor at the United States Military Academy who on July first, nineteen hundred and fourteen, should have served not less than thirty-three years in the Army, one-third of which service shall have been as professor and instructor at the Military Academy, shall on that date have the rank, pay, and allowances of a colonel in the Army. *Act of Aug. 9, 1912 (37 Stat. 264).*

1116a. *Assignment of assistant professor to department of laws.*—Hereafter there may be assigned to the department of law one assistant professor. *Act of Jan. 16, 1895 (28 Stat. 630).*

1117a. *Pay and allowances of associate professor of mathematics; detail of from officers of Army.*—Hereafter the associate professor of mathematics shall have pay and allowances of a major, and the position shall be filled by the detail of an officer from the Army at large. *Act of Mar. 3, 1905 (33 Stat. 850).*

1125a. *Rank, pay, and allowances of professor who has served not less than thirty-three years in the Army, one-third of which has been at the Military Academy.*—Any officer of the United States Army

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now holding the position of permanent professor at the United States Military Academy who on July first, nineteen hundred and sixteen, should have served not less than thirty-three years in the Army, one-third of which service shall have been as professor and instructor at the Military Academy, shall on that date have the rank, pay, and allowances of a colonel in the Army. *Act of Aug. 11, 1916 (39 Stat. 493)*.

1131a. *Custodian of gymnasium to act as trainer of athletic teams.*—For pay of one custodian of gymnasium, who shall hereafter be selected and appointed by the Superintendent of the Military Academy under Schedule A, classified positions excepted from examination under rule two, clause three, civil-service rules, who shall be qualified to act as trainer for the various cadet athletic teams, one thousand two hundred dollars. *Act of Mar. 3, 1911 (36 Stat., 1019)*.

1136a. *Detail of commissary sergeant.*—The Secretary of War is hereby authorized to detail a commissary-sergeant to act as assistant to the commissary of cadets. *Act of June 30, 1882 (22 Stat. 123)*.

1136b. *Retirement of present manager of cadet store, pay of.*—The present manager of the cadet store shall, on his own application, after forty years' service as clerk, superintendent, and manager of said store, be entitled to be placed on the retired list of the Army with the pay of a retired pay clerk, Quartermaster Corps, of the same period of service. *Act of Aug. 11, 1916 (39 Stat. 493)*.

CORPS OF CADETS.

1139a. *Number and appointment, including appointments from honor graduates of colleges.*—The Corps of Cadets at the United States Military Academy shall hereafter consist of two for each congressional district, two from each Territory, four from the District of Columbia, two from natives of Porto Rico, four from each State at large, and eighty from the United States at large, twenty of whom shall be selected from among the honor graduates of educational institutions having officers of the Regular Army detailed as professors of military science and tactics under existing law or any law hereafter enacted for the detail of officers of the Regular Army to such institutions, and which institutions are designated as "honor schools" upon the determination of their relative standing at the last preceding annual inspection regularly made by the War Department. They shall be appointed by the President and shall, with the exception of the eighty appointed from the United States at large, be actual residents of the congressional or Territorial district, or of the District of Columbia, or of the island of Porto Rico, or of the States, respectively, from which they purport to be appointed. *Sec. 1, Act of May 4, 1916 (39 Stat. 62)*.

(For the ensuing provision of this section see paragraph 1141b.)

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1139b. *Same—Appointment of one hundred and eighty from enlisted men of Regular Army and the National Guard.*—The President is hereby authorized to appoint cadets to the United States Military Academy from among enlisted men in number as nearly equal as practicable of the Regular Army and the National Guard between the ages of nineteen and twenty-two years who have served as enlisted men not less than one year, to be selected under such regulations as the President may prescribe: *Provided*, That the total number so selected shall not exceed one hundred and eighty at any one time.[1] *Sec. 2, id.*

1139c. *Same—Appointments authorized to be divided into four annual increments.*—Under such regulations as the President shall prescribe, the increase in the number of cadets provided for by this Act shall be divided into four annual increments, which shall be as nearly equal as practicable and be equitably distributed among the sources from which appointments are authorized. *Sec. 3, id.*

1139d. *Appointment of board of officers to report upon needs as to buildings, to accommodate increased Corps of Cadets.*—The Secretary of War is authorized and directed to appoint three officers of the Army, whose duty it shall be to investigate and to make report to Congress on the first Monday in December, nineteen hundred and sixteen, what is necessary to be done in the way of buildings and other improvements to accommodate and care for the increased Corps of Cadets, as provided by the Act of May fourth, nineteen hundred and sixteen, together with the probable cost thereof. *Act of Aug. 11, 1916 (39 Stat. 503).*

1141a. *Admission of successor after three years' course.*—Until the apportionment under the Fourteenth Census of the United States becomes effective, whenever any cadet shall have finished three years of his course at the academy his successor may be admitted. *Act of Mar. 4, 1915 (38 Stat. 1128).*

1141b. *Same—Repealed, but appointment of each member of present corps validated.*—So much of the Act of Congress approved March fourth, nineteen hundred and fifteen (Thirty-eighth Statutes at Large, page eleven hundred and twenty-eight), as provides for the admission of a successor to any cadet who shall have finished three years of his course at the academy be, and the same is hereby, repealed: *Provided further*, That the appointment of each member of the present Corps of Cadets is validated and confirmed. *Sec. 1, Act of May 4, 1916 (39 Stat. 62).*

(For the preceding provision of this section see par. 1139a.)

[1] *Held*, that the statute contemplates a year's service in one or the other of the forces named, and that service as an enlisted man in the Navy could not be counted for the purposes of the act.

Held, that to satisfy the requirements of the statute the prior service must have been rendered in that branch from which the application is made. (War Dept. Bull. 9, Feb. 2, 1917.)

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1143a. *Appointment from the Philippines.*—The four Filipino cadets authorized by the Act of May twenty-eighth, nineteen hundred and eight, to be designated by the Philippine Commission to receive instructions at the United States Military Academy, shall hereafter be designated by the Governor General of the Philippine Islands. *Act of Aug. 11, 1916 (39 Stat. 493).*

1158a. *Supplies, technical and scientific, for departments of instruction, purchase of, by contract or otherwise, in discretion of Secretary of War.*—All technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best. *Act of Mar. 4, 1915 (38 Stat. 1136).*

DEFICIENT CADETS.

1162a. *Second examination where deficient in one subject.*—Whenever a cadet shall fail to pass any required examination because deficient in any one subject of instruction he shall have the right to apply for a second examination regarding such subject by making written application therefor to the Academic Board within ten days after being officially notified of such failure. The examination demanded shall be held within sixty days from the date of such application, and if the cadet being otherwise qualified shall pass the same by compliance with the requirements existing at the time of the first examination, he shall be readmitted to the academy. *Act of Aug. 11, 1916 (39 Stat. 493).*

1162b. *Same—Applicable to former cadets who failed in not more than two subjects during current year.*—This proviso shall apply to those former cadets who failed in not more than two subjects during the current year, who shall make application for such examination within twenty days after the approval of this Act.—*Id.*

1162c. *Same—Not to be given more than one reexamination.*—Any cadet who fails to pass any required examination shall have no more than one reexamination. *Id.*

1162d. *Honorably discharged eligible for appointment as second lieutenants under national-defense Act.*—Nothing contained in section thirteen hundred and twenty-five of the Revised Statutes shall render ineligable any former cadet honorably discharged from the Military Academy for deficiency in studies, if otherwise qualified, as a civilian candidate for appointment to any vacancy in the grade of second lieutenant under class six of the national-defense Act approved June third, nineteen hundred and sixteen.—*Id.*

1162e. *Not eligible for appointment in Marine Corps until after graduation of his class.*—No midshipman at the United States Naval Academy or cadet at the United States Military Academy who fails

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to graduate therefrom shall be eligible for appointment as a commissioned officer in the Marine Corps until after the graduation of the class of which he was a member. *Act of Aug. 29, 1916 (39 Stat. 611).*

1174a. *Board of visitors.*—There shall be appointed every year, in the following manner, a board of visitors, to attend the annual examination of the academy: Seven persons shall be appointed by the President, and two Senators and three Members of the House of Representatives shall be designated as visitors by the Vice President or President pro tempore of the Senate and the Speaker of the House of Representatives, respectively, at the session of Congress next preceding such examination.[1] *Sec. 1327, R. S.*

1174b. *Compensation of visitors.*—No compensation shall be made to the members of said board beyond the payment of their expenses for board and lodging while at the academy and an allowance not exceeding eight cents a mile for traveling by the shortest mail route from their respective homes to the academy and thence to their homes.[2] *Sec. 1329, R. S.*

1176a. *Extra pay for overseer of waterworks.*—From the foregoing appropriations for waterworks, or from any appropriation that may hereafter be made for waterworks, a sum not to exceed seventy-five cents per day may be paid as extra-duty pay to the overseer, when such overseer is a soldier detailed for that duty. *Act of Mar. 2, 1901 (31 Stat. 920).*

1176b. *Rank and pay of enlisted man at headquarters, Corps of Cadets.*—The enlisted man in the headquarters, United States Corps of Cadets, performing that duty has the rank, pay, and allowance of that grade (battalion sergeant major, Infantry). *Act of Aug. 11, 1916 (39 Stat. 496).*

1178a. *Subscriptions for newspapers and periodicals for.*—Section thirty-six hundred and forty-eight, Revised Statutes, shall not apply to subscriptions for foreign, professional, and other newspapers and periodicals, to be paid for from any of the foregoing appropriations. *Act of Mar. 4, 1915 (38 Stat. 1136).*

1178b. *Wharfage dues to be charged.*—The Secretary of War is authorized to have collected from vessels using the wharf and ferry slip at West Point, New York, such wharfage dues as he may deem just, reasonable, and necessary, the same to be paid at the time of landing to the post quartermaster or his authorized agent. *(Act of Mar. 4, 1915 (38 Stat. 1137).*

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[1] The Act of Aug. 9, 1912 (37 Stat. 257), par. 1174, ante, appears to supersede all of this section except the requirement that "There shall be appointed every year * * * a board of visitors."

[2] The Act of Aug. 9, 1912 (37 Stat. 257), par. 1174, ante, appears to supersede all of this section except the requirement that "No compensation shall be made to the members of said board beyond the payment of their expenses * * * and an allowance, * * * for traveling by the shortest mail route."

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1179a. *Settlement of accounts between other bureaus of War Department, etc., and the Military Academy.*—Hereafter in settling transactions between appropriations for the support of the United States Military Academy and other bureaus of the War Department, or between the United States Military Academy and any other executive department of the Government, payment therefor shall be made by the disbursing officer of the United States Military Academy or of the office, bureau, or department concerned. *Act of Aug. 11, 1916 (39 Stat. 504).*

1183a. *Translator for the Army service schools.*—Not exceeding $100 per month may be used for the payment of one translator, to be appointed by the commandant of the Army service schools,[1] with the approval of the Secretary of War. *Act of Aug. 29, 1916 (39 Stat. 620).*

1183b. *Assignment of second lieutenants in Field Artillery to batteries at School of Fire for Field Artillery for practical instructions.*—Officers in the grade of second lieutenant in the Field Artillery may be assigned, for the period of one year, to batteries stationed at the School of Fire for Feild Artillery at Fort Sill, Oklahoma, for the purpose of pursuing courses of practical instruction in field artillery. *Id. 621.*

[1] The provisions relative to the United States service schools, which precede the authorization for a translator at the Army service schools, are the same as those contained in par. 1183, ante.

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CHAPTER XXIX.

CONTRACTS AND PURCHASES.

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Same	1236b
Contracts for publication of Official Postal Guide	1236c

1198a. *Selection of types and purchase of motor ambulances without advertising.*—The Secretary of War may in his discretion select types and makes of motor ambulances for the Army and authorize their purchase without regard to the laws prescribing advertisement for proposals for supplies and material for the Army. *Act of Aug. 29, 1916 (39 Stat. 639).*

1211a. *Contracts entered into by Quartermaster Corps, certain to be reduced to writing, etc.*—Hereafter whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Quartermaster General, or by officers of the Quartermaster Corps authorized to make them, and are in excess of $500 in amount, such contracts shall be reduced to writing and signed by the contracting parties. In all other cases contracts shall be entered into under such regulations as may be prescribed by the Quartermaster General. *Act of Mar. 4, 1915 (38 Stat. 1078).*

1211b. *Contracts entered into by Signal Corps, certain to be reduced to writing, etc.*—Hereafter whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Chief Signal Officer, or by officers of the Signal Corps authorized to make them, and are in excess of $500 in amount, such contracts shall be reduced to writing and signed by the contracting parties. In all other cases contracts shall be entered into under such regulations as may be prescribed by the Chief Signal Officer. *Act of Aug. 29, 1916 (39 Stat. 622).*

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1211c. *Contracts entered into by Medical Department, certain to be reduced to writing, etc.*—Hereafter, whenever contracts which are not to be performed within sixty days are made on behalf of the Government by the Surgeon General or by officers of the Medical Department authorized to make them, and are in excess of $500 in amount, such contracts shall be reduced to writing and signed by the contracting parties, but in all other cases contracts shall be prepared under such regulations as may be prescribed by the Surgeon General. *Id. 639.*

1223a. *Eight-hour law—Suspension of in time of national emergency.*—In case of national emergency the President is authorized to suspend provisions of law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by contracts with the United States. *Act of Mar. 4, 1917 (Pub. No. 391, 39 Stat. —).*

1223b. *Same—Rate of pay for overtime.*—The wages of persons employed upon such contracts shall be computed on a basic day rate of eight hours work, with overtime rates to be paid for at not less than time and one-half for all hours work in excess of eight hours. *Id.*

1236a. *Contracts for printing.*—No part of the appropriations for the Quartermaster Corps shall be expended on printing unless the same shall be done at the Government Printing Office, or by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the purchase of material and hire of the necessary labor for the purpose.[1] *Act of Mar. 4, 1915 (38 Stat. 1073).*

1236b. *Same.*—No part of the appropriations for the Quartermaster Corps shall be expended on printing unless the same shall be done at the Government Printing Office, or by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done with the approval of the Secretary of War, by the purchase of material and hire of the necessary labor for the purpose. *Act of Aug. 29, 1916 (39 Stat. 631).*

1236c. *Contracts for publication of Official Postal Guide.*—Hereafter contracts let for the publication of the Official Postal Guide shall provide for the supply of such copies as may be required for public use by the several executive departments and other Government establishments at a price not exceeding the cost of such guides to the Post Office Department. *Act of May 10, 1916 (39 Stat. 108).*

[1] For similar provision see Act of Apr. 27, 1914 (38 Stat. 362).

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CHAPTER XXX.

PUBLIC PROPERTY.

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1259a. *Secretary of War to prescribe regulations for accounting for Army supplies or property.*—Hereafter the accounting for Army supplies or property and the fixing of responsibility therefor shall be according to such regulations as may be prescribed by the Secretary of War. *Act of Aug. 29, 1916 (39 Stat. 635).*

1259b. *Loan of tents, restrictions on.*—Hereafter no loan of tents shall be made except to the Grand Army of the Republic and the United Confederate Veterans. *Joint resolution No. 11, Mar. 2, 1913 (37 Stat. 1025).*

1261a. *Exchange of sewing machines, etc., motor trucks, passenger-carrying vehicles, and band instruments on purchase of new.*—Hereafter sewing machines and other labor-saving machinery used

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in the manufacture of clothing and equipage, motor trucks and passenger-carrying vehicles, and band instruments may be exchanged in part payment for new machines, vehicles, and instruments used for the same purpose as those proposed to be exchanged. *Act of Aug. 29, 1916* .(*39 Stat. 635*).

1272a. *Soldiers' homestead, military service on Mexican border, etc., equivalent to residence.*—The provisions of the Act approved June sixteenth, eighteen hundred and ninety-eight, chapter four hundred and fifty-eight (Thirtieth Statutes at Large, page four hundred and seventy-three), shall be applicable in all cases of military service rendered in connection with operations in Mexico, or along the borders thereof, or in mobilization camps elsewhere, whether such service be in the military or naval organization of the United States or the National Guard of the several States now or hereafter in the service of the United States. *Joint resolution No. — of Aug. 29, 1916* (*39 Stat. 671*).

1274a. *Donation of lands for aviation field and remount station, acceptance of.*—The Secretary of War is hereby authorized to accept for the United States from any citizen of the United States a donation of a tract or tracts of land suitable and desirable in his judgment for the purposes of an aviation field and remount station, the terms of the donation also to authorize the use of the property donated for any other service of the United States which may hereafter appear desirable. *Act of Aug. 29, 1916* (*39 Stat. 622*).

1274b. *Purchase of lands for aviation purposes provided military reservations are not available.*—The Secretary of War is directed to investigate the suitability of the various military reservations for aviation purposes, and should any of the reservations be found not suitable and not available for aviation, he is authorized, in his discretion, to acquire, by purchase, condemnation, or otherwise, for the United States of America, such land as may be necessary for aviation purposes, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $300,000, or so much thereof as may be necessary, for said purpose. *Id.*

1274c. *Donation of lands for mobilization, training, and supply stations, acceptance of; also report as to additional needs for National Guard and Regular Army.*—The Secretary of War is hereby authorized to accept for the United States from any person such tract or tracts of land suitable and desirable in his judgment for permanent mobilization, training, and supply stations; and he is directed to investigate and report to Congress as soon as practicable what additional tracts are necessary for said purposes for use by the National Guard and by the Regular Army and the probable cost of the same. *Id. 623.*

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1274d. *Report as to land and buildings required for airships, etc., for seacoast defenses.*—The Secretary of War is directed to submit to Congress on or before January first, nineteen hundred and eighteen, a detailed statement of the land, buildings, and other facilities now available and to be required for the accommodation of airships and other aerial machines to be used in connection with the seacoast defenses of the continental United States, the insular possessions, and the Panama Canal. *Act of Feb. 14, 1917, (Pub. No. 309, 39 Stat. —).*

1279a. *Erection of Young Men's Christian Association buildings on military reservations.*—Authority is hereby given to the Secretary of War, in his discretion, to grant permission by revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain, on the military reservations within the United States or its island possessions, such buildings as their work for the promotion of the social, physical, intellectual, and moral welfare of the garrisons may require, unde rsuch regulations as the Secretary of War may impose. *Act of May 31, 1902 (32 Stat., 282).*

1279b. *Revocable license to American National Red Cross to erect buildings on military reservations for storage of supplies.*—Authority is hereby given to the Secretary of War to grant permission, by revokable license, to the American National Red Cross to erect and maintain on any military reservations within the jurisdiction of the United States buildings suitable for the storage of supplies, or to occupy for that purpose buildings erected by the United States, under such regulations as the Secretary of War may prescribe, such supplies to be available for the aid of the civilian population in case of serious national disaster. *Sec. 10, Act of June 3, 1916 (38 Stat. 173).*

(For the provision of this section immediately preceding this paragraph see paragraph 750c).

1293a. *Educational instructions, vocational education, employment of civilian teachers, etc., for enlisted men.*—In addition to military training, soldiers while in the active service shall hereafter be given the opportunity to study and receive instruction upon educational lines of such character as to increase their military efficiency and enable them to return to civil life better equipped for industrial, commercial, and general business occupations. Civilian teachers may be employed to aid the Army officers in giving such instruction, and part of this instruction may consist of vocational education either in agriculture or or the mechanical arts. *Sec. 27, Id.*, 186.

(For provision of this section immediately preceding this paragraph see paragraph 1032a.)

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1293b. *Same—Secretary of War to prescribe necessary rules and regulations, and suspend, increase, or decrease the amount of instruction.*—The Secretary of War, with the approval of the President, shall prescribe rules and regulations for conducting the instruction herein provided for, and the Secretary of War shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered as may in his judgment be consistent with the requirements of military instruction and service of the soldiers. *Id.*

1294a. *Post offices at military posts.*—Hereafter, at all military posts where post offices have been established, the Secretary of War shall assign proper and suitable room or rooms for post office purposes. *Act of Aug. 1, 1914 (38 State. 629).*

1315a. *Trespass upon or injury to mines, torpedoes, fortifications, etc., or violation of regulations as to defensive sea areas.*—Section forty-four of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be, and the same is hereby, amended to read as follows:

"SEC. 44. Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished on conviction thereof in a district or circuit court of appeals of the United States for the district or circuit in which the offense is committed, or into which the offender is first brought, by a fine of not more than $5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court." *Act of Mar. 4, 1917 (Pub. No. 391, 39 Stat. —).*

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CHAPTER XXXI.

THE MILITIA—TERRITORIAL AND DISTRICT MILITIA.

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NATIONAL GUARD.

1321a. *Word Territory defined.*—The word Territory as used in this Act and in all laws relating to the land militia and National Guard shall include and apply to Hawaii, Alaska, Porto Rico, and the Canal Zone, and the militia of the Canal Zone shall be organized under such rules and regulations, not in conflict with the provisions of this Act, as the President may prescribe. *Sec. 62, Act of June 3, 1916 (39 Stat. 198).*

(For the provisions of this section preceding this paragraph see paragraphs 1325e, 1325f, 1325g, and 1325h; see, also, paragraphs 1376 and 1377.)

1322a. *Composition of.*—The militia of the United States shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the National Guard, the Naval Militia, and the Unorganized Militia. *Sec. 57, id. 197.*

1322b. *Composition of the National Guard.*—The National Guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years.[1] *Sec. 58 id.*

1322c. *Provisions of Act applicable to land forces only.*—The provisions of this Act in respect to the militia shall be applicable only to militia organized as a land force and not to the Naval Militia, which shall consist of such part of the militia as may be prescribed by the President for each State, Territory, or District. *Sec. 117, id. 212.*

1322d. *Same—Any State or Territory maintaining Naval Militia may have credit to number of on its quota.*—Each State, Territory,

[1] *Held*, that this provision is controlling and limits the ages for qualification as therein specified, and that the provisions in section 27 relating to the ages for enlistment or muster in have no application to the National Guard. (War Dept. Bull. 28, Aug. 18, 1916.)

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or District maintaining a Naval Militia as herein prescribed may be credited to the extent of the number thereof in the quota that would otherwise be required by section sixty-two of this Act. *Id.*

1323a. *Exemptions from militia duty, and exemption as combatants.*—The Vice President of the United States; the officers, judicial and executive, of the Government of the United States and of the several States and Territories; persons in the military or naval service of the United States; customhouse clerks; persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots; mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from militia duty without regard to age, and all persons who because of religious belief shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be noncombatant.[1] *Sec. 59, id. 197.*

(See par. 1324 for prior law exempting religious sects or organizations.)

1325a. *Organization of National Guard units.*—Except as otherwise specifically provided herein, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each State, Territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units.[2] *Sec. 60, id.*

(See par. 1326.)

[1] *Held*, that the exemptions are personal and may be waived, and that a person who waives his exemption by enlisting in the National Guard can not thereafter during the enlistment avail himself of it. (War Dept. Bull. 28, Aug. 18, 1916.)

[2] *Held*, that while the Aviation Section of the Signal Corps, provided for in section 16 of the National Defense Act, is prescribed for the Regular Army only, and officers and enlisted men of the National Guard are not eligible for detail to fill places therein, and while there is no corresponding Signal Corps or Aviation Section prescribed for the National Guard, there may be Aviation Squadrons, or unit parts thereof, in the National Guard of the several States as component parts of the "complete higher tactical units" contemplated by section 60, *idem*, and the officers and enlisted men therein will, when duly qualified, be entitled while in the actual service of the United States, or while attending encampments or maneuvers ordered by the Secretary of War, to the same pay and allowances as officers and enlisted men of corresponding grades of the Regular Army receive, including increase of pay while on duty requiring them to participate regularly and frequently in aerial flights.

Held, that the conformity of organization of the National Guard to the Regular Army required by the statute does not relate to the qualifications

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1325b. *Same—State troops in time of peace must conform to prescribed organization.*—No State shall maintain troops in time of peace other than as authorized in accordance with the organization prescribed under this Act. *Sec. 61, id. 198.*

1325c. *Right of States and Territories to use National Guard within their borders in time of peace not limited by Act.*—Nothing contained in this Act shall be construed as limiting the rights of States and Territories in the use of the National Guard within their respective borders in time of peace. *Id.*

1325d. *Organization and maintenance of State police or constabulary not forbidden by Act.*—Nothing contained in this Act shall prevent the organization and maintenance of State police or constabulary. *Id.*

1325e. *Minimum and maximum number of enlisted men for each Senator and Representative.*—The number of enlisted men of the National Guard to be organized under this Act within one year from its passage shall be for each State in the proportion of two hundred such men for each Senator and Representative in Congress from such State, and a number to be determined by the President for each Territory and the District of Columbia, and shall be increased each year thereafter in the proportion of not less than fifty per centum until a total peace strength of not less than eight hundred enlisted men for each Senator and Representative in Congress shall have been reached. *Sec. 62, id.*

1325f. *President may fix maximum number in States having but one Representative.*—In States which have but one Representative in Congress such increase shall be at the discretion of the President. *Id.*

1325g. *Any State or Territory may organize maximum number in less time than Act specifies.*—This shall not be construed to prevent any State, Territory, or the District of Columbia from organizing

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of officers for appointment or promotion; that the matter of appointment or promotion in the National Guard rests primarily with the governor of the State, subject to the rules prescribed in section 74 of the National Defense Act relating to the classes of persons from which National Guard officers shall be appointed, and in section 75 relating to examinations to determine qualifications, and that, therefore, an original appointment to the grade of major may, subject to the restrictions mentioned, be made by the governor without regard to the previous service of the appointee; but that inasmuch as the office of captain in the Medical Corps has no existence independent of the person qualified by a period of service to fill it, appointees to that grade in the Medical Corps of the National Guard must have served as first lieutenants for the period fixed by law. (War Dept. Bull. 34, Sept. 12, 1916.)

Request was made on behalf of medical officers of the National Guard in the service of the United States that the Secretary of War, under his power to authorize general exceptions, permit them to hold the office of captain and to receive the pay of that office, irrespective of their length of service as medical officers of the National Guard.

Held, that the word "exception" in section 60 is used in the sense of "exclusion," that it does not include "substitution," that the statute authorizes modification only by way of exclusion, and that the request could not, therefore, be granted. (War Dept. Bull. 9, Feb. 2, 1917.)

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the full number of troops required under this section in less time than is specified in this section, or from maintaining existing organizations if they shall conform to such rules and regulations regarding organization, strength, and armament as the President may prescribe. *Id.*

1325h. *Any State with but one Representative may organize one or more regiments, etc.*—Nothing in this Act shall be construed to prevent any State with but one Representative in Congress from organizing one or more regiments of troops, with such auxiliary troops as the President may prescribe; such organizations and members of such organizations to receive all the benefits accruing under this Act under the conditions set forth herein. *Id.*

(For the last provision of this section see paragraph 1321a, *ante.*)

1325i. *Organization into divisions, brigades, and other tactical units to assist in instructions and training.*—For the purpose of maintaining appropriate organization and to assist in instruction and training, the President may assign the National Guard of the several States and Territories and the District of Columbia to divisions, brigades, and other tactical units, and may detail officers either from the National Guard or the Regular Army to command such units. *Sec. 64, id.*

1325j. *Same—Commanding officers of complete units organized within a State or Territory not to be displaced.*—Where complete units are organized within a State, Territory, or the District of Columbia the commanding officers thereof shall not be displaced under the provisions of this section. *Id., 199.*

1325k. *Detail of officer of Regular Army as chief of Staff of any division in service of United States.*—The President may detail one officer of the Regular Army as chief of staff and one officer of the Regular Army or the National Guard as assistant to the chief of staff of any division of the National Guard in the service of the United States as a National Guard organization. *Sec. 65, id.*

1325l. *Same—Detail of regular officer as chief of staff of each tactical division to insure prompt mobilization in time of war, etc.*—In order to insure the prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail an officer of the Regular Army to perform the duties of chief of staff for each fully organized tactical division of the National Guard. *Id.*

1325m. *Location of units and headquarters to be determined by States and Territories.*—The States and Territories shall have the right to determine and fix the location of the units and headquarters of the National Guard within their respective borders. *Sec. 68, id. 200.*

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1325n. *Same—Units not to be disbanded or reduced below minimum strength without consent of President.*—No organization of the National Guard, members of which shall be entitled to and shall have received compensation under the provisions of this act, shall be disbanded, without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President. *Id.*

NATIONAL GUARD RESERVE.

1325o. *Composition of.*—Subject to such rules and regulations as the President may prescribe, a National Guard Reserve shall be organized in each State, Territory, and the District of Columbia, and shall consist of such organizations, officers, and enlisted men as the President may prescribe, or members thereof may be assigned as reserves to an active organization of the National Guard.[1] *Sec. 78, id. 202.*

[See paragraph 1344l.]

1325p. *Same—Pay and allowances of, while engaged in training with active National Guard.*—Members of said reserve, when engaged in field or coast-defense training with the active National Guard, shall receive the same Federal pay and allowances as enlisted men of like grade on the active list of said guard when likewise engaged. *Id.*

1325q. *Same—Appropriation for National Guard purposes not available for.*—Except as otherwise specifically provided in this Act, no commissioned or enlisted reservist shall receive any pay or allowances out of any appropriation made by Congress for National Guard purposes. *Id.*

1325r. *Same—Organization of reserve battalions in time of war.*—When members of the National Guard and the enlisted reserve thereof of any State, Territory, or the District of Columbia shall have been brought into the service of the United States in time of war, there shall be immediately organized, either from such enlisted reserve or from the unorganized militia, in such State, Territory, or District, one reserve battalion for each regiment of Infantry or Cavalry, or each nine batteries of Field Artillery, or each twelve companies of Coast Artillery, brought into the service of the United States, and such reserve battalion shall constitute the fourth bat-

[1] *Held*, that until an organization thereof is prescribed by the President the National Guard Reserve remains an unorganized force, and that therefore when a soldier passes to that reserve he becomes one of a class of militia which has not been called into the service of the United States, and there is no legal authority for accepting him into the Federal service until his class is called into the service of the United States pursuant to law. (War Dept. Bull. 47, Nov. 16, 1916.)

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talion of any such regiment or twelve companies of Coast Artillery. Reserve battalions shall consist of four companies of such strength as may be prescribed by the President of the United States. *Sec. 79, id.*

1325s. *Same—Organization of provisional regiments and higher units.*—When the members of three or more regiments of the National Guard of any State, Territory, or District shall have been brought into the service of the United States, the reserve battalions of such regiments may be organized into provisional regiments and higher units. *Id.*

1325t. *Same—Drafting unorganized militia into service of United States to maintain reserve battalions at proper strength.*—If for any reason there shall not be enough voluntary enlistments to keep the reserve battalions at the prescribed strength, a sufficient number of the unorganized militia shall be drafted into the service of the United States to maintain each of such battalions at the proper strength. *Id.*

1325u. *Same—Vacancies in organizations in service to be filled from reserve battalions, etc.*—As vacancies occur from death or other causes in any organization in the service of the United States and composed of men taken from the National Guard, men shall be transferred from the reserve battalions to the organizations in the field so that such organizations may be maintained at war strength. Officers for the reserve battalions provided for herein shall be drafted from the National Guard Reserve or Coast Artillery companies of the National Guard or the Officers' Reserve Corps, such officers to be taken, if practicable, from the States, respectively, in which the battalions shall be organized. Officers and noncommissioned officers returned to their home stations because of their inability to perform active field service may be assigned to reserve battalions for duty, and all soldiers invalided home shall be assigned to and carried on the rolls of reserve battalions until returned to duty or until discharged. *Id. 203.*

1325v. *President to make necessary rules and regulations for organizing and disciplining.*—The President shall make all necessary rules and regulations and issue such orders as may be necessary for the thorough organization, discipline, and government of the militia provided for in this Act. *Sec. 118, id. 213.*

1327a. *Ancient privileges of certain organizations may be retained.*—Any corps of Artillery, Cavalry, or Infantry existing in any of the States on the passage of the Act of May eighth, seventeen hundred and ninety-two, which by the laws, customs, or usages of said States has been in continuous existence since the passage of said Act, under its provisions and under the provisions of section two hundred and thirty-two and sections sixteen hundred and twenty-five to sixteen hundred and sixty, both inclusive, of title sixteen of the

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Revised Statutes of eighteen hundred and seventy-three, and the Act of January twenty-first, nineteen hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of militia. *Sec. 63, id. 198.*

1327b. *Same—Form a part of National Guard, and shall conform to its organization, etc., in time of war.*—Said organizations may be a part of the National Guard and entitled to all the privileges of this Act, and shall conform in all respects to the organization, discipline, and training of the National Guard in time of war. *Id.*

1327c. *Same—Assignment to higher units for training and when on active duty.*—For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. *Id.*

1328a. *Joint encampments, maneuvers, etc., with Regular Army.*—Under such regulations as the President may prescribe the Secretary of War is authorized to provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds appropriated for that purpose and allotted to any State, Territory, or the District of Columbia, such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of such State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction; and the officers and enlisted men of such National Guard while so engaged shall be entitled to the same pay, subsistence, and transportation as officers and enlisted men of corresponding grades of the Regular Army are or hereafter may be entitled by law. *Sec. 94, id. 206.*

1328b. *Same—Command where organization of Regular Army and of National Guard participate in joint maneuvers, etc.*—When any part of the National Guard participates in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction at a United States military post, or reservation, or elsewhere, if in conjunction with troops of the United States, the command of such military post or reservation and of the officers and troops of the United States on duty there or elsewhere shall remain with the commander of the United States troops without regard to the rank of the commanding or other officer of the National Guard temporarily engaged in the encampments, maneuvers, or other exercises. *Sec. 95, id. 207.*

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1328c. *Details of Regular Army officers and enlisted men as instructors at encampments and maneuvers.*—The Secretary of War may detail one or more officers and enlisted men of the Regular Army to attend any encampment, maneuver, or other exercise for field or coast-defense instruction of the National Guard, who shall give such instruction and information to the officers and men assembled for such encampment, maneuver, or other exercise as may be directed by the Secretary of War or requested by the governor or by the commanding officer of the National Guard there on duty. *Sec. 96, id.*

1328d. *Appropriation for National Guard encampments, maneuvers, etc.*—To provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, including outdoor target practice and field and coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds apportioned for that purpose and allotted to any State, Territory, or the District of Columbia such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of said State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice and field and coast-defense instruction; and the officers and enlisted men of such National Guard while so engaged shall be entitled to the same pay, subsistence, and transportation as officers and enlisted men of corresponding grades of the Regular Army are or hereafter may be entitled to by law. *Act of Aug. 29, 1916 (39 Stat. 645).*

(For provision relative to National Guard camps of instruction, see paragraph 1331g, post.)

1328e. *Reduced rates of transportation for members of National Guard attending joint maneuvers.*—Hereafter nothing in the Act of February fourth, eighteen hundred and eighty-seven,[1] known as the Act to regulate commerce, or any amendments thereto, shall be construed to prohibit any common carrier from giving reduced rates for members of National Guard organizations traveling to and from joint encampments with the Regular Army. *Id. 646.*

1328f. *Joint encampments with Regular Army may be held by militia when impracticable to obtain presence of regular troops.*—For paying the expenses of the Organized Militia or National Guard of any State, Territory, or of the District of Columbia, which may be authorized by the Secretary of War to participate in such encampments as may be established for the field instruction of the troops of the Regular Army, as provided by sections fifteen and twenty-one of

[1] 24 Stat. 379.

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the Act of January twenty-first, nineteen hundred and three, entitled "An Act to promote the efficiency of the militia, and for other purposes," as amended, or as may hereafter be authorized by law, to be immediately available and to remain available until the end of the fiscal year nineteen hundred and seventeen, $200,000 is hereby appropriated: *Provided*, That when it is not practicable to obtain the presence of regular troops for a joint encampment, the funds herein appropriated shall be available for such encampments, maneuvers, and field instruction for the Organized Militia or National Guard as the Secretary of War may prescribe. *Act of June 12, 1916 (39 Stat. 226)*.

1330a. *Pay for participation in encampments, maneuvers, etc., beginning of.*—When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, for field or coast-defense instruction, under the provisions of this Act, it may, after being duly mustered, be paid at any time after such muster for the period from the date of leaving the home rendezvous to date of return thereto as determined in advance, both dates inclusive; and such payment, if otherwise correct, shall pass to the credit of the disbursing officer making the same. *Sec. 98, Act of June 3, 1916 (39 Stat. 207)*.

(See paragraph 1331f.)

PAY OF OFFICERS AND ENLISTED MEN NOT IN SERVICE OF UNITED STATES.

1330b. *Schedule of pay for second lieutenants to captains; officers of higher rank to receive pay of captain.*—Certain commissioned officers on the active list belonging to organizations of the National Guard of each State, Territory, and the District of Columbia participating in the apportionment of the annual appropriation for the support of the National Guard shall receive compensation for their services, except during periods of service for which they may become lawfully entitled to the same pay as officers of corresponding grades of the Regular Army, as follows, not to include longevity pay: A captain $500 per year and the same pay shall be paid to every officer of higher rank than that of captain, a first lieutenant $240 per year, and a second lieutenant $200 per year. *Sec. 109, id. 209.*

1330c. *Same—Secretary of War to prescribe regulations as to amount and character of service to be rendered to entitle to maximum pay.*—Regulations to be prescribed by the Secretary of War shall determine the amount and character of service that must be rendered by officers to entitle them to the whole or specific parts of the maximum pay hereinbefore authorized. *Id.*

1330d. *Same—Pay of staff officers, aids-de-camp, chaplains, etc.*—All staff officers, aids-de-camp, and chaplains shall receive not to exceed one-half of the pay of a captain, except that regimental adju-

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tants, and majors and captains in command of machine-gun companies, ambulance companies, field hospital companies, or sanitary troops shall receive the pay hereinbefore authorized for a captain. *Id.*

1330e. *Pay of enlisted men on active list.*—Each enlisted man on the active list belonging to an organization of the National Guard of a State, Territory, or the District of Columbia, participating in the apportionment of the annual appropriation for the support of the National Guard, shall receive compensation for his services, except during periods of service for which he may become lawfully entitled to the same pay as an enlisted man of corresponding grade in the Regular Army, at a rate equal to twenty-five per centum of the initial pay now provided by law for enlisted men of corresponding grades of the Regular Army. *Sec. 110, id.*

1330f. *Same—Full compensation only in case of attendance upon maximum number of drills annually.*—Such enlisted man shall receive the compensation herein provided if he shall have attended not less than forty-eight regular drills during any one year, and a proportionate amount for attendance upon a lesser number of such drills, not less than twenty-four; and no such enlisted man shall receive any part of said compensation except as authorized by this proviso and the three provisos next following. *Id. 210.*

1330g. *Same—Compensation computed semiannually beginning the first day of January and July of each year.*—The compensation provided herein shall be computed for semiannual periods, beginning the first day of January and the first day of July of each year, in proportion to the number of drills attended; and no compensation shall be paid to any enlisted man for the first semiannual period of any year unless he shall have attended during said period at least twenty-four drills, but any lesser number of drills attended during said period shall be reckoned with the drills attended during the second semiannual period in computing the compensation, if any, due him for that year. *Id.*

1330h. *Same—Compensation for portion of semiannual period on enlistment or expiration during.*—When any man enters into an enlistment other than an immediate reenlistment he shall be entitled to proportional compensation for that year if during the remainder of the year he shall attend a number of drills whose ratio to twenty-four is not less than the ratio of the part of the year so served to the whole year; and when any man's enlistment shall expire the compensation, if any, to which he may be entitled shall be determined in like manner. *Id.*

1330i. *Same—Acceptance of equivalent periods of military duty in lieu of drills.*—Periods of any actual military duty equivalent to the

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drills herein prescribed (except those periods of service for which members of the National Guard may become lawfully entitled to the same pay as officers and enlisted men of the corresponding grades in the Regular Army) may be accepted as service in lieu of such drills when so provided by the Secretary of War. *Id.*

1330j. *Same—Disbursements to be made by officers of Quartermaster Corps.*—All amounts appropriated for the purpose of this and the last preceding section shall be disbursed and accounted for by the officers and agents of the Quartermaster Corps of the Army, and all disbursements under the foregoing provisions of this section shall be made as soon as practicable after the thirty-first day of December and the thirtieth day of June of each year upon pay rolls prepared and authenticated in the manner to be prescribed by the Secretary of war. *Id.*

(See paragraph 1329, ante.)

1330k. *Same—Stoppages to cover cost of public property lost or destroyed by officers or enlisted men.*—Stoppages may be made against the compensation payable to any officer or enlisted man hereunder to cover the cost of public property lost or destroyed by and chargeable to such officer or enlisted man. *Id.*

1330l. *Same—Withholding payment for failure to comply with law as to age limit, staff organization, appointment of officers to fill vacancies, etc.*—Except as otherwise specifically provided herein, no money appropriated under the provisions of this or the last preceding section shall be paid to any person not on the active list, nor to any person over sixty-four years of age, nor to any person who shall fail to qualitfy as to fitness for military service under such regulations as the Secretary of War shall prescribe, nor to any State, Territory, or District, or officer or enlisted man in the National Guard thereof, unless and until such State, Territory, or District provides by law that staff officers, including officers of the Pay, Inspection, Subsistence, and Medical Departments, hereafter appointed, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the militia of such State, Territory, or District. *Id.*

1330m. *Same—Time limit within which such withholding becomes operative in any State or Territory.*—The preceding proviso shall not apply to any State, Territory, or District until sixty days next after the adjournment of the next session of its legislature held after the approval of this Act. *Id., 211.*

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1331a. *Leaves of absence for Government employees.*—All officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this Act. *Sec. 49, Act of Mar. 1, 1889 (25 Stat. 779).*

1331b. *Leaves of absence for Government employees while engaged in training.*—All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this Act. *Sec. 80, Act of June 3, 1916 (39 Stat. 203).*

1331c. *Discipline, including training, to conform to system prescribed for Regular Army.*—The discipline (which includes training) of the National Guard shall conform to the system which is now or may hereafter be prescribed for the Regular Army, and the training shall be carried out by the several States, Territories, and the District of Columbia so as to conform to the provisions of this Act. *Sec. 91, id. 206.*

1331d. *Same—Drill, instructions, and training, character and amount required annually.*—Each company, troop, battery, and detachment in the National Guard shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall, in addition thereto, participate in encampments, maneuvers, or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such company, troop, battery, or detachment shall have been excused from participation in any part thereof by the Secretary of War. *Sec. 92, id.*

1331e. *Same—Credit for assembly drill or indoor target practice, duration of and minimum number to participate in, etc.*—Credit for an assembly for drill or for indoor target practice shall not be given unless the number of officers and enlisted men present for duty at such assembly shall equal or exceed a minimum to be prescribed by the President, nor unless the period of actual military duty and instruction participated in by each officer and enlisted man at each such assembly at which he shall be credited as having been present shall be of at least one and one-half hours' duration and the character of training such as may be prescribed by the Secretary of War. *Id.*

1331f. *Secretary of War may provide instruction camps to be conducted by officers of Regular Army.*—Under such regulations as the

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President may prescribe the Secretary of War may provide camps for the instruction of officers and enlisted men of the National Guard. Such camps shall be conducted by officers of the Regular Army detailed by the Secretary of War for that purpose, and may be located either within or without the State, Territory, or District of Columbia to which the members of the National Guard designated to attend said camps shall belong. Officers and enlisted men attending such camps shall be entitled to pay and transportation, and enlisted men to subsistence in addition, at the same rates as for encampments or maneuvers for field or coast-defense instruction. *Sec. 97, id. 207.*

(See paragraph 1330a.)

1331g. *Appropriation for National Guard camps of instruction.*—To provide for camps of instruction for the instruction of officers and enlisted men of the National Guard. Such camps shall be conducted by officers of the Regular Army detailed by the Secretary of War for the purpose, and may be located either within or without the State, Territory, or District of Columbia to which the members of the National Guard designated to attend said camps shall belong. Officers and enlisted men attending such camps shall be entitled to pay and transportation, and enlisted men to subsistence in addition at the same rates as for encampments or maneuvers for field and coast-defense instruction. To be immediately available, $500,000: *Provided*, That of this sum $100,000, or as much thereof as may be necessary, is authorized to be expended for the payment of transportation of troops of the Regular Army in connection with joint camps of instruction of the National Guard. *Act of Aug. 29, 1916 (39 Stat. 645).*

(For provision relative to National Guard encampments, maneuvers, etc., see paragraph 1328d, ante.)

1331h. *Transportation of teams to participate in national matches, selection of and allotment for.*—For the payment of transportation of teams authorized by the Secretary of War to participate in the national matches, $60,000: *Provided*, That this amount shall be proportioned among the several States, territories, and the District of Columbia according to the distance from the seat of government to the place where the national matches are to be held: *And provided further*, That the governors of the States or Territories or the Board of Commissioners of the District of Columbia may designate which team or teams shall attend from their respective States, Territories, or District of Columbia. *Id. 648.*

1332a. *Detail of sergeants with the National Guard and with disciplinary organizations at United States Disciplinary Barracks.*—For the purpose of assisting in the instruction of the personnel and care of property in the hands of the National Guard the Secretary of

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War is authorized to detail from the Infantry, Cavalry, Field Artillery, Corps of Engineers, Coast Artillery Corps, Medical Department, and Signal Corps of the Regular Army not to exceed one thousand sergeants for duty with corresponding organizations of the National Guard and not to exceed one hundred sergeants for duty with the disciplinary organizations at the United States Disciplinary Barracks, who shall be additional to the sergeants authorized by this Act for the corps, companies, troops, batteries, and detachments from which they may be detailed.[1] *Sec. 36, Act of June 3, 1916 (39 Stat. 189).*

(See paragraph 480a, ante, for prior authorization for detail of officers, noncommissioned officers, etc., at the United States Disciplinary Barracks. For composition of the enlisted force of the Medical Department, the Corps of Engineers, Signal Corps, troop of Cavalry, Coast Artillery Corps, gun or howitzer battery of Field Artillery, and company of Infantry, see paragraphs 756a, 784a, 890a, 1074a, 1086a, and 1095b, respectively.)

1332b. *Detail of officers and enlisted men of Regular Army to duty with; officers may accept commissions in without vacating their Regular Army commissions.*—The Secretary of War shall detail officers of the active list of the Army to duty with the National Guard in each State, Territory, or District of Columbia, and officers so detailed may accept commissions in the National Guard, with the permission of the President and terminable in his discretion, without vacating their commissions in the Regular Army or being prejudiced in their relative or lineal standing therein. The Secretary of War may, upon like application, detail one or more enlisted men of the Regular Army with each State, Territory, or District of Columbia for duty in connection with the National Guard. But nothing in this section shall be so construed as to prevent the detail of retired officers as now provided by law. *Sec. 100, id. 208.*

(See paragraphs 1333a–1333d, post.)

1332c.—*Temporary vacancies in Regular Army due to details in in time of war.*—In time of war the temporary vacancies created in any grade not above that of colonel among the commissioned personnel of any arm, staff corps, or department of the Regular Army, through appointments of officers thereof to higher rank in organizations composed of members taken from the National Guard, shall be filled by temporary promotions according to seniority in

[1] *Held,* that the purpose of the act being to provide for the detail of competent men for the purposes mentioned, the word "sergeants" should be construed in its broader sense so as to include the detail of sergeants, first class, in the few cases where, on account of the technical knowledge required, the instruction of the Signal Corps of the National Guard can be properly given only by such sergeants. (War Dept. Bull. 28, Aug. 18, 1916.)

Held, that the statute only authorizes additional sergeants, and that while it may be advisable and permissible at times to detail sergeants, first class, to duty as instructors (Bull. 28, W. D., 1916, p. 9), such an assignment can not operate to increase the authorized number of sergeants, first class, which is fixed by law. (War Dept. Bull. 3, Jan. 19, 1917.)

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rank from officers holding commissions in the next lower grade in said arm, staff corps, or department, and all vacancies created in any grade by such temporary promotions shall be in like manner filled from, and thus create temporary vacancies in, the next lower grade, and the vacancies that shall remain thereafter in said arm, staff corps, or department and that can not be filled by temporary promotions, as prescribed in this section, may be filled by the temporary appointment of officers of such number and grade or grades as shall maintain said arm, corps, or department at the full commissioned strength authorized by law. *Sec. 114, Id. 211.*

1332d. *Same—Vacancies in staff corps and departments to be filled by temporary details.*—In the staff corps and departments subject to the provisions of sections twenty-six and twenty-seven of the Act of February second, nineteen hundred and one, and Acts amendatory thereof,[1] temporary vacancies that can not be filled by temporary promotions as hereinbefore prescribed shall be filled by temporary details in the manner prescribed in said sections twenty-six and twenty-seven, and Acts amendatory thereof, and the resulting temporary vacancies in the branches of the Army from which the details shall be so made shall be filled as hereinbefore in this section prescribed. *Id. 212.*

1332e. *Same—Temporary appointments and promotions to be made by the President and confirmed by the Senate.*—Officers temporarily promoted or appointed under the terms of this section shall be promoted or appointed by the President, by and with the advice and consent of the Senate, for terms that shall not extend beyond the war or the passing of the emergency for which additional forces were brought into the military service of the United States, and at the termination of the war or the passing of the emergency said officers shall be discharged from the positions held by them under their temporary commissions or appointments, and officers detailed as herein authorized shall be relieved from their temporary details. *Id.*

1332f. *Same—Officers temporarily promoted not to vacate their permanent commissions, etc.*—Officers temporarily promoted under the provisions of this section shall not vacate their permanent commissions nor be prejudiced in their relative or lineal standing in the Regular Army. *Id.*

1333a. *Inspector-instructors to use State armories for offices.*—Whenever practicable inspector-instructors shall use the State armories for offices. *Act of Aug. 29, 1916 (39 Stat. 647).*

1333b. *Inspector-instructors limited to actual expenses when traveling.*—Travel of inspector-instructors in making visits of instruction to armories, * * * : *Provided*, That said inspector-instructors

[1] See paragraphs 373–385, ante.

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traveling shall not receive more than their actual expense out of these appropriations. *Id., 646.*

1334a. *Officers and enlisted men attending United States military schools.*—Under such regulations as the President may prescribe, the Secretary of War may, upon the recommendation of the governor of any State or Territory or the commanding general of the National Guard of the District of Columbia, authorize a limited number of selected officers or enlisted men of the National Guard to attend and pursue a regular course of study at any military service school of the United States, except the United States Military Academy; or to be attached to an organization of the same arm, corps, or department to which such officer or enlisted man shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises; and such officer or enlisted man shall receive, out of any National Guard allotment of funds available for the purpose, the same travel allowances and quarters, or commutation of quarters, and the same pay, allowances, and subsistence to which an officer or enlisted man of the Regular Army would be entitled for attending such school, college, or practical course of instruction under orders from proper military authority, while in actual attendance at such school, college, or practical course of instruction. *Sec. 99. Act of June 3, 1916 (39 Stat. 207).*

1334b. *Same—Pay and allowances in no case to exceed those of a captain.*—In no case shall the pay and allowances authorized by this section exceed those of a captain. *Id.*

1334c. *Appropriation for officers and enlisted men of National Guard attending Army service schools, etc.*—To provide for the attendance of selected officers or enlisted men of the National Guard who pursue a regular course of study at any military service school of the United States except the United States Military Academy, or to be attached to an organization of the same arm, corps, or department, to which such officers or enlisted men shall belong, for routine practical instruction at or near an Army post during a period of field training or other outdoor exercises; and such officer or enlisted men shall receive out of any National Guard allotment of funds available for the purpose, the same travel allowances and quarters or commutation of quarters, and the same pay, allowance, and subsistence to which officers or enlisted men of the Regular Army would be entitled for attending such school, college, or practical course of instruction under orders from proper military authority while in actual attendance at such school, college, or practical course of instruction, $50,000: *Provided*, That in no case shall the pay and allowances authorized herein exceed those of a captain. *Act of Aug. 29, 1916 (39 Stat. 646).*

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1335a. *Adjutants general of States, duties of.*—The adjutants general of the States, Territories, and the District of Columbia and the officers of the National Guard shall make such returns and reports to the Secretary of War, or to such officers as he may designate, at such times and in such form as the Secretary of War may from time to time prescribed.[1] *Sec. 66, Act of June 3, 1916 (39 Stat. 199).*

1335b. *Adjutants general of Territories and District of Columbia, appointment of.*—The adjutants general of the Territories and of the District of Columbia shall be appointed by the President with such rank and qualifications as he may prescribe, and each adjutant general for a Territory shall be a citizen of the Territory for which he is appointed. *Id.*

(See paragraphs 1374, 1377, and 1378.)

1337a. *National Militia Board abolished; Militia Division changed to Militia Bureau.*—The National Militia Board created by section eleven of the Act of May twenty-seventh, nineteen hundred and eight,[2] amending section twenty of the Act of January twenty-first, nineteen hundred and three, shall, from the date of the approval of this Act, be abolished. The Militia Division now existing in the War Department shall hereafter be known as the Militia Bureau of said department, shall, like other bureaus of said department, be under the immediate supervision of the Secretary of War, and shall not form a part of any other bureau, office, or other organization, but the Chief of the Militia Bureau shall be ex officio a member of the General Staff Corps. *Sec. 81, id. 203.*

1337b. *Two officers of National Guard may be assigned to duty as assistants to chief of Militia Bureau; rank and pay of.*—The President may, in his discretion, assign to duty in the Militia Bureau as assistants to the chief thereof not to exceed one colonel and one lieutenant colonel of the National Guard, for terms of four years, and any such officer while so assigned shall, subject to such regulations as the President may prescribe, receive out of the whole fund appropriated for the support of the militia the pay and allowances of a Regular Army officer having the same rank and length of service as said National Guard officer, whose prior service in the Organized Militia shall be counted in ascertaining his rights under this proviso. *Id.*

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[1] *Held*, that in providing for the organization of the National Guard as a Federal force Congress has recognized the duties of the several States, and has required or relied upon their cooperation; that the adjutant general is an official whom the act contemplates the State will provide and maintain in the performance of its duties; and that it recognizes the adjutant general of a State as a State official only and not as an officer of the National Guard. (War Dept. Bull. 18, July 8, 1916.)

[2] See pars. 1337 and 1338, ante, or 35 Stat. 402.

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USE OF ARMED LAND FORCES OF UNITED STATES.

1339a. *Drafted into service of United States.*—When Congress shall have authorized the use of the armed land forces of the United States, for any purpose requiring the use of troops in excess of those of the Regular Army, the President may, under such regulations, including such physical examination, as he may prescribe, draft into the military service of the United States, to serve therein for the period of the war unless sooner discharged, any or all members of the National Guard and of the National Guard Reserve.[1] *Sec. 111, id. 211.*

1339b. *Same—Organization of; subject to rules and Articles of War; discharged from militia.*—All persons so drafted shall, from the date of their draft, stand discharged from the militia, and shall from said date be subject to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Volunteer Army, and shall be embodied in organizations corresponding as far as practicable to those of the Regular Army or shall be otherwise assigned as the President may direct. *Id.*

1339c. *Same—Appointment of commissioned officers.*—The commissioned officers of said organizations shall be appointed from among the members thereof, officers with rank not above that of colonel to be appointed by the President alone, and all other officers to be appointed by the President by and with the advice and consent of the Senate. *Id.*

1339d. *Same—Pay and allowances of officers and enlisted men.*—Officers and enlisted men in the service of the United States under the terms of this section shall have the same pay and allowances as officers and enlisted men of the Regular Army of the same grades and the same prior service. *Id.*

1339e. *Same—Pensions.*—When any officer or enlisted man of the National Guard drafted into the service of the United States in time of war is disabled by reason of wounds or disability received or incurred while in the active service of the United States in time of war, he shall be entitled to all the benefits of the pension laws existing at the time of his service, and in case such officer or enlisted man dies in the active service of the United States in time of war or in returning to his place of residence after being mustered out of such service,

[1] It is, therefore, clear that the President, in exercising the power of draft, is not required to draft the National Guard as a whole, but may draft a part thereof, in his discretion. He could, therefore, utilize the remainder of the National Guard as a part of a Volunteer Army in the manner prescribed in sec. 3 of the Volnuteer Army Act. It may be here observed, however, that enlistment in the Volunteer Army is a voluntary matter, and the President can not compel the National Guard organizations to enter the same. (War Dept. Bull 18, July 8, 1916.)

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or at any other time in consequence of wounds or disabilities received in such active service, his widow and children, if any, shall be entitled to all the benefits of such pension laws. *Sec. 112, id.*

(See paragraphs 1348 and 1339j.)

1339f. *Physical examination of officers and enlisted men on being called into service of United States.*—Every officer and enlisted man of the National Guard who shall be called into the service of the United States as such shall be examined as to his physical fitness under such regulations as the President may prescribe without further commission or enlistment.[1] *Sec. 115, Id. 212.*

1339g. *Same—Physical examination prior to muster out.*—Immediately preceding the muster out of an officer or enlisted man called into the active service of the United States he shall be physically examined under rules prescribed by the President of the United States, and the record thereof shall be filed and kept in the War Department. *Id.*

1339h. *Congress declares emergency to exist and authorizes drafting of the National Guard, the Organized Militia, and Organized Militia Reserve.*—In the opinion of the Congress of the United States an emergency now exists which demands the use of troops in addition to the Regular Army of the United States, and that the President be, and he is hereby, authorized to draft into the military service of the United States, under the provisions of section one hundred and eleven of the national defense Act approved June third, nineteen hundred and sixteen, so far as the provisions of said section may be applicable and not inconsistent with the terms hereof, any or all members of the National Guard and of the Organized Militia of the Several States, Territories, and the District of Columbia and any and all members of the National Guard and Organized Militia

[1] *Held* as follows: Under the national-defense Act the National Guard occupies a dual status; i. e., as a national force and also as a State force, and no officer or enlisted man can remain a member unless he is physically qualified for Federal service. Congress has prescribed the qualifications for commission or enlistment in the National Guard and has asserted, on behalf of the United States, the authority to prescribe the conditions under which enlistments and discharges in and from the National Guard shall be made. Sec. 72 of the national-defense act restricts discharges in time of peace, so that no discharge may be given in time of peace "prior to the expiration of terms of enlistment" except "under such regulations as the President may prescribe." Sec. 115 provides for a medical examination to determine the physical condition of the officers and enlisted men when called into the service of the United States, and it appears clear that an officer or enlisted man, upon being examined as required in that section and found physically defective, must be discharged not only from the operation of the call into the Federal service, but also from the National Guard. In the case of an enlisted man the discharge, when ordered, should be effected by a discharge in writing, signed by the proper National Guard commander, under the provisions of Sec. 72 of the national-defense act, and should be so worded as to show that it is a discharge not only from the operation of the Federal call, but also from the National Guard. With respect to a commissioned officer, a discharge should be ordered by the President and should purport to be a discharge from the National Guard. (War Dept. Bull. 28, Aug. 18, 1916.)

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Reserves, to serve for the period of the emergency, not exceeding three years, unless sooner discharged. *Sec. 1, Joint Resolution No. — of July 1, 1916 (39 Stat. 339).*

1339i. *Same—Persons so drafted to stand dishcarged from militia during period of their service.*—All persons so drafted shall, from the date of their draft, stand discharged from the militia during the period of their service under said draft. *Id. 340.*

1339j. *Same—Pensions.*—The provisions of section one hundred and twelve of the national defense Act of June third, nineteen hundred and sixteen, shall be applicable to any officer or enlisted man drafted into the service of the United States pursuant to the provisions of this joint resolution.[1] *Sec. 2, id.*

1339k. *Same—Organization of drafted units and appointment of officers for same.*—When organizations the members of which are drafted under the provisions of this resolution do not constitute complete tactical units the President may, by combining such organizations, organize battalions, regiments, brigades, and divisions, and may appoint officers for such units from the Regular Army, from the members of such organizations, from those duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three,[2] or members of the Officers' Reserve Corps as provided in section thirty-eight of the national defense Act of June third, nineteen hundred and sixteen, officers with rank not above that of colonel to be appointed by the President alone and all other officers to be appointed by the President, by and with the advice and consent of the Senate. *Sec. 3, id.*

1339l. *Same.—Vacancies in Regular Army caused by appointment of officers to positions in drafted forces, filling of.*—Vacancies incident to the appointment of officers of the Regular Army to the positions in the forces drafted for this emergency may be filled under the provisions of section eight of the Act of April twenty-fifth, nineteen hundred and fourteen.[3] *Id.*

1339m. *Same—Rank and command, officers of same grade.*—Whenever in time of war or public danger or during the emergency declared in section one of this resolution, two or more officers of the same grade are on duty in the same field, department, or command, or organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order without regard to date of rank or commission as between officers of different

[1] See par. 1339e, *ante.*
[2] See footnote to par. 1388, *ante*, for law authorizing list of eligibles for commissions.
[3] See par. 1389, *ante.*

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classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted into the military service of the United States. *Sec. 4, id.*

1339n. *Same—Rank and precedence of officers of Regular Army holding commissions in drafted forces.*—Officers of the Regular Army holding commissions in forces drafted into the service of the United States shall rank and have precedence under said commissions as if they were commissioned in the Regular Army; but the rank of officers of the Regular Army under their commissions in the forces drafted into the service of the United States shall not for the purpose of this resolution be held to antedate muster or draft into the service of the United States. *Id.*

1339o. *Officers and enlisted men of National Guard and Medical Reserve Corps who are Government employees and responded to the call to be restored to their positions at expiration of their military service.*—All officers and enlisted men of the National Guard and of the Medical Reserve Corps of the Army who are Government employees and who respond to the call of the President for service shall, at the expiration of the military service to which they are called, be restored to the positions occupied by them at the time of the call. *Act of Aug. 29, 1916 (39 Stat. 624).*

1342a. *Subject to rules and articles of war when called into service of United States.*—The National Guard when called as such into the service of the United States shall, from the time they are required by the terms of the call to respond thereto, be subject to the laws and regulations governing the Regular Army, so far as such laws and regulations are applicable to officers and enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law. *Sec. 101, Act of June 3, 1916 (39 Stat. 208).*

COURTS-MARTIAL.

1343a. *System of courts-martial for when not in service of United States.*—Except in organizations in the service of the United States, court-martial in the National Guard shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the forms and modes of procedure prescribed for said similar courts. *Sec. 102, id.*

1343b. *Same—Convening authority and jurisdiction of general courts-martial.*—General courts-martial of the National Guard not

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in the service of the United States may be convened by orders of the President, or of the governors of the respective States and Territories, or by the commanding general of the National Guard of the District of Columbia, and such courts shall have the power to impose fines not exceeding $200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. *Sec. 103, id.*

1343c. *Same—Convening authority and jurisdiction of special courts-martial.*—In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such courts shall not exceed $100. *Sec. 104, id.*

1343d. *Same—Convening authority and jurisdiction of summary courts.*—In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment or corps, detached battalion, company, or other detachment of the National Guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding $25 for any single offense; may sentence noncommissioned officer to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the Army of the United States. *Sec. 105, id.*

1343e. *Same—All courts-martial may impose confinement in lieu of authorized fines.*—All courts-martial of the National Guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: *Provided*, That such sentences of confinement shall not exceed one day for each dollar of fine authorized. *Sec. 106, id. 209.*

1343f. *Same—Approval of sentence of dismissal or dishonorable discharge.*—No sentence of dismissal from the service or dishonorable

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discharge, imposed by a National Guard court-martial, not in the service of the United States, shall be executed until approved by the governor of the State or Territory concerned, or by the commanding general of the National Guard of the District of Columbia. *Sec. 107, id.*

1343g. *Same—Presidents of courts-martial and summary court officers empowered to issue warrants for arrest of accused and other necessary process.*—In the National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpœnas and subpœnas duces tecum and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. *Sec. 108, id.*

1343h. *Same—All processes and sentences of courts to be executed by prescribed civil officers.*—All processes and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the several States and Territories, and in any State where no provision shall have been made for such action, and in the Territories and the District of Columbia, such processes and sentences shall be executed by a United States marshal or his duly appointed deputy, and it shall be the duty of any United States marshal to execute all such processes and sentences and make return thereof to the officer issuing or imposing the same. *Id.*

ENLISTMENT.

1344a. *Period of.*—Hereafter the period of enlistment in the National Guard shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the National Guard Reserve,[1] hereinafter provided for, and the qualifications for enlistment shall be the same as those prescribed for admission to the Regular Army.[2] *Sec. 69, id. 200.*

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[1] See par. 1325o, *ante*.

[2] *Held*, that those members so qualified who are in the active service of the United States under the President's call of June 18, 1916, which call did not include the National Guard Reserve, are entitled to be mustered out of the active service at the end of their active enlistment period of three years for the purpose of taking their place in the National Guard Reserve, and that they can not be held for further active service against their will, but that they have the *privilege*, under section 69 of the national defense Act, of continuing in the active service during the whole of the enlistment period; *and further*, that they may, with the concurrence of the War Department, elect to continue in active service for such portion of the remaining three years during which the National Guard shall remain in active Federal service. (War Dept. Bull. 28, Aug. 18, 1916.)

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1344b. *Same—May be active during entire enlistment period, with right to reenlist.*—In the National Guard the privilege of continuing in active service during the whole of an enlistment period and of reenlisting in said service shall not be denied by reason of anything contained in this Act.[1] *Id.*

1344c. *Federal enlistment contract and oath.*—Enlisted men in the National Guard of the several States, Territories, and the District of Columbia now serving under enlistment contracts which contain an obligation to defend the Constitution of the United States and to obey the orders of the President of the United States shall be recognized as members of the National Guard under the provisions of this Act for the unexpired portion of their present enlistment contracts. When any such enlistment contract does not contain such obligation, the enlisted man shall not be recognized as a member of the National Guard until he shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment, upon signing which credit shall be given for the period already served under the old enlistment contract: "I do hereby acknowledge to have voluntarily enlisted this — day of ——, 19—, as a soldier in the National Guard of the United States and of the State of ——, for the period of three years in service and three years in the reserve, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the State of ———, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and of the governor of the State of ———, and of the officers appointed over me according to law and the Rules and Articles of War." *Sec. 70, id. 201.*

1344d. *Same—Applies to all subsequent enlistments.*—Hereafter all men enlisting for service in the National Guard shall sign an enlistment contract and take and subscribe to the oath prescribed in the preceding shection of this Act. *Sec. 71, id.*

1344e. *Discharge, form of; may be issued in time of peace before expiration of term of enlistment.*—An enlisted man discharged from service in the National Guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army and in time of peace discharges may

[1] *Held,* that the sense of the above statutory provision is that an enlisted man of the National Guard who elects to remain in service instead of being furloughed to the National Guard Reserve at the expiration of the first three-year period of his enlistment must make the election as to the whole of his enlistment period, and that the soldier in the instant case could not elect to remain in the active service only one year of the remaining three years of his enlistment period. (War Dept. Bull. 47, Nov. 16, 1916.)

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be given prior to the expiration of terms of enlistment under such regulations as the President may prescribe.[1] *Sec. 72, id.*

OFFICERS.

1344f. *Regularly commissioned officers to continue in office without issuance of new commissions.*—Commissioned officers of the National Guard of the several States, Territories, and the District of Columbia now serving under commissions regularly issued shall continue in office, as officers of the National Guard, without the issuance of new commissions.[2] *Sec. 73, id.*

1344g. *Same—Federal oath to be taken by.*—Said officers have taken, or shall take and subscribe to the following oath of office: "I, ———, do solemnly swear that I will support and defend the Constitution of the United States and the constitution of the State of ———, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the governor of the State of ———; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of ——— in the National Guard of the United States and of the State of ——— upon which I am about to enter, so help me God."[3] *Id.*

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[1] (*a*) "Can a member of the National Guard be furloughed to the reserve before the end of the active service period?

(*b*) "Can a member of the National Guard, once furloughed before the end of the three-year term of active service, be removed from the reserve and be restored to the active list to serve the remainder of the three-year active term?"

Held, that the word "service," as used in section 72, relates to the active three-year period, and that an enlisted man is entitled to a discharge in writing at the end of such period; that such discharge is not the final and absolute discharge so familiar to the Regular Army, but is a release from active service, remitting the soldier to the reserve. *Held*, as to (*a*) that since section 72 unqualifiedly authorizes discharge in time of peace, under regulations prescribed by the President, a National Guardsman may be discharged from active service and transferred to the reserve *before* the end of the active-service period. *Held*, as to (*b*), that since a discharge from active service is a release from so much of the enlistment contract as requires active service, such obligation can not be renewed without the soldiers consent, which would have to be embodied in a new contract, and therefore a member of the National Guard reserve can be restored to the three-year active service status in the National Guard only by discharge and reenlistment. (War Dept. Bull. 3, Jan. 19, 1917.)

[2] *Held*, that this provision operates only to render effective in the National Guard commissions issued by a State and does not prolong the officer's commission, and that a National Guard officer in the service of the United States can not, under existing law, be compelled to continue in the service of the United States as an officer of the National Guard after the expiration of his commission. (War Dept. Bull. 3, Jan. 19, 1917.)

[3] Upon the questions (*a*) whether officers who have taken the oath prescribed by sec. 73 of the National Defense Act but who belong to organizations the enlisted men of which have not taken the oath prescribed by sec. 70, are officers of the National Guard within the meaning of that Act; and (*b*) what effect will the taking of the oath prescribed in sec. 70 of the National Defense Act by an enlisted man of the Organized Militia of the State have upon his enlistment in the Organized Militia under the law of his State?

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1344h. *Classes from which commissioned officers may be selected for appointment.*—Persons hereafter commissioned as officers of the National Guard shall not be recognized as such under any of the provisions of this Act unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in the preceding section of this Act: Officers or enlisted men of the National Guard; officers on the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy, and Marine Corps; graduates of the United States Military and Naval Academies and graduates of schools, colleges, and universities where military science is taught under the supervision of an officer of the Regular Army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein.[1] *Sec. 74, id.*

(See footnote to paragraph 1325a.)

1344i. *Same—Examination to determine physical, moral, and professional fitness for appointment.*—The provisions of this Act shall not apply to any person hereafter appointed an officer of the National Guard unless he first shall have successfully passed such tests as to his physical, moral, and professional fitness as the President shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of three commissioned officers appointed by the Secretary of War from the Regular Army or the National Guard, or both. *Sec. 75, id. 202.*

(See footnote to paragraph 1339f; also footnote to paragraph 1325a.)

1344j. *Filling vacancies in organizations which have been drafted into Federal service.*—All vacancies occurring in any grade of commissioned officers in any organization in the military service of the United States and composed of persons drafted from the National

Held, as to (*a*) that an officer of the Organized Militia who takes the oath prescribed by sec. 73 of the National Defense Act becomes an officer of the National Guard under the National Defense Act, that there may be a recognition of an individual member of the National Guard, officer or enlisted man, separate and apart from the recognition of the organization to which he belongs, that while under the provisions of sec. 110 pay can only accrue to officers and enlisted men belonging to recognized organizations, the recognition of an officer or enlisted man separately may have substantial value, in that he thereby becomes qualified for appointment to office in the National Guard under sec. 74, and if an officer between the ages of 21 and 27 years becomes eligible for appointment as second lieutenant in the Regular Army under sec. 24; and as to (*b*) that the taking of the oath prescribed by sec. 70 by an enlisted man of the Organized Militia transforms the enlisted man of the Organized Militia into a member of the National Guard and substitutes a new enlistment contract for his former State enlistment contrac. (War Dept. Bull. 47, Nov. 16. 1916.)

[1] *Held*, that the status of retired officers will not be impaired by active service under a National Guard commission. During their service as National Guard officers in the active service of the United States they will receive only the pay of their National Guard offices. (War Dept. Bull. 28, Aug. 18, 1916.)

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Guard under the provisions of this Act shall be filled by the President, as far as practicable, by the appointment of persons similarly taken from said guard, and in the manner prescribed by law for filling similar vacancies occurring in the volunteer forces.[1] *Sec. 76, id.*

1344k. *Discharge of officers on approved findings of efficiency board, etc.*—At any time the moral character, capacity, and general fitness for the service of any National Guard officer may be determined by an efficiency board of three commissioned officers, senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such an officer, he shall be discharged. Commissions of officers of the National Guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. *Sec. 77, id.*

1344l. *Transfer of officers to National Guard Reserve on their application or when rendered surplus by disbandment of their organizations.*—Officers of said guard rendered surplus by the disbandment of their organizations shall be placed in the National Guard Reserve. Officers may, upon their own application, be placed in the said reserve. *Id.*

(See paragraphs 1325o–1325u, *ante.*)

SUPPORT OF DEPENDENT FAMILIES.

1347a. *Applies to families of members of Organized Militia, National Guard, and Regular Army.*—The sum of $2,000,000 is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of War, and under such rules and regulations as he may prescribe, for the support of, at a cost of not more than $50 per month, or so much of said amount as the Secretary of War may deem necessary, and not more than such enlisted man has been contributing monthly to the support of his family at the time of his being called or drafted into the service of the United States or during his enlistment period in the Regular Army at the time of such call or draft of the Organized Militia or National Guard, the family of each enlisted man of the Organized Militia or National Guard called or drafted into the service of the United States until his discharge from such service, and the family of each enlisted man of the Regular Army until his discharge from active service therein or until the discharge of the Organized Militia or National Guard from such service if such enlisted man is at that time in active service in the Regular Army, which

[1] See chapter entitled Volunteers, par. 1389.

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family during the term of service of such enlisted man has no other income, except the pay of such enlisted man, adequate for the support of said family. *Act of Aug. 29, 1916 (39 Stat. 649.)*

1347b. *Same—Action of Secretary of War to be final in all cases.*—The action of the Secretary of War in all cases provided for in this paragraph shall be final, and no right to prosecute a suit in the Court of Claims or in any other court of the United States against the Government of the United States shall accrue to such enlisted man, or to any member of the family of any such enlisted man, by virtue of the passage of this Act. *Id.*

1347c. *Same—Not applicable where soldier marries after certain date; family defined.*—This paragraph shall not apply to any such enlisted man who shall marry after the fifteenth day of July, nineteen hundred and sixteen; and the word "family" shall include only wife, children, and dependent mothers. *Id.*

1347d. *Same—Amendment of provision so as to cover enlistments made before and after call of the President, etc.*—The Act approved August twenty-ninth, nineteen hundred and sixteen, being an Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes, is hereby amended as follows:

"The sum of $2,000,000, therein appropriated to be expended under the direction of the Secretary of War for the support of the family of each enlisted man of the Organized Militia or National Guard, or of the Regular Army, as therein provided, shall be available to be paid on the basis of and for time subsequent to June eighteenth, nineteen hundred and sixteen, the date of the call by the President, and the time for which such payment shall be made shall correspond with the time of service of the enlisted men, and payment shall be made without reference to the enlisted man having enlisted before or after the call by the President." *Sec. 901, Act of Sept. 8, 1916 (39 Stat. 801).*

1347e. *Same—Appropriation for continuation of, under same conditions as original appropriation.*—For the support of dependent families of enlisted men, including the same objects and under the same limitations specified in the appropriation for this purpose in the Army appropriation Act for the fiscal year nineteen hundred and seventeen as amended by section nine hundred and one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, $4,250,000. *Act of Dec. 22, 1916 (Pub. No. 288, 39 Stat. —).*

1349a. *Men enlisted to bring organizations up to minimum entitled to pay from date of enlistment to date of muster in or rejection.*—Nothing in this Act or previous Acts of Congress shall be construed

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to prohibit the paying of men enlisted by State authorities of any State for militia organization for the purpose of bringing said organization up to the minimum necessary to permit of the muster in of said organization, from the date of such enlistments to the date of muster in or from date of enlistment to date of rejection, after physical examination.[1] *Act of Aug. 29, 1916 (39 Stat. 624).*

1349b. *Transportation to their homes of members of National Guard who have been discharged because of dependent families.*—When members of the National Guard, who have been mustered into the service of the United States, have been discharged under the order of the War Department which provides that members of the National Guard with dependent families may be mustered out, transportation from their position on the Mexican border to their homes may be authorized by the Secretary of War. *Id. 633.*

1351a. *Permanent annual appropriation.*—A sum of money shall hereafter be appropriated annually, to be paid out of any money in the Treasury not otherwise appropriated, for the support of the National Guard, including the expense of providing arms, ordnance stores, quartermaster stores, and camp equipage, and all other military supplies for issue to the National Guard, and such other expenses pertaining to said guard as are now or may hereafter be authorized by law. *Sec. 67, Act of June 3, 1916 (39 Stat. 199).*

(See paragraphs 1352–1355.)

1351b. *Apportionment among States and Territories.*—The appropriation provided for in this section shall be apportioned among the several States and Territories under just and equitable procedure to be prescribed by the Secretary of War and in direct ratio to the number of enlisted men in active service in the National Guard existing in such States and Territories at the date of apportionment of said appropriation, and to the District of Columbia, under such regulations as the President may prescribe. *Id.*

(See paragraphs 1353–1355.)

1351c. *Same—Allotments available for what purposes.*—The sum so apportioned among the several States, Territories, and the District of Columbia, shall be available under such rules as may be prescribed by the Secretary of War for the actual and necessary expenses incurred by officers and enlisted men of the Regular Army

[1] *Held*, that in the case of enlisted men recruited for the purpose of bringing a National Guard organization up to the maximum strength, who are mustered in, payment may be made from the date of enlistment to the date of muster in, but that in the case of those similarly enlisted who are rejected, after physical examination, there is no authority for their payment from Federal funds for the time between the date of enlistment and the date of rejection. (Comp. Treas., Sept. 30, 1916. War Dept. Bull. 47, Nov. 16, 1916.)

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when traveling on duty in connection with the National Guard;[1] for the transportation of supplies furnished to the National Guard for the permanent equipment thereof; for office rent and necessary office expenses of officers of the Regular Army on duty with the National Guard; for the expenses of the Militia Bureau, including clerical services, now auhorized for the Division of Militia Affairs; for expenses of enlisted men of the Regular Army on duty with the National Guard, including quarters, fuel, light, medicines, and medical attendance; and such expenses shall constitute a charge against the whole sum annually appropriated for the support of the National Guard, and shall be paid therefrom and not from the allotment duly apportioned to any particular State, Territory, or the District of Columbia; for the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges; for the hiring of horses and draft animals for the use of mounted troops, batteries, and wagons; for forage for the same; and for such other incidental expenses in connection with lawfully authorized encampments, maneuvers, and field instruction as the Secretary of War may deem necessary; and for such other expenses pertaining to the National Guard as are now or may hereafter be authorized by law. *Id.*

(See pars. 1351-1355.)

1351d. *Same—Appointment and duties of property and disbursing officer in connection with.*—The governor of each State and Territory and the commanding general of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, an officer of the National Guard of the State, Territory, or District of Columbia who shall be regarded as property and disbursing officer for the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the National Guard of his State, Territory, or District, and shall make such returns and reports concerning the same as may be required by the Secretary of War. The Secretary of War is authorized, on the requisition of the governor of a State or Territory or the commanding general of the National Guard of the District of Columbia, to pay to the property and disbursing officer thereof so much of its allotment out of the annual appropriation for the support of the National Guard as shall, in the

[1] In the case of an officer of the Ordnance Department directed to make an inspection of Field Artillery material in the hands of the National Guard.

Held, that he was entitled to actual expenses of travel, and not mileage, for travel in the performance of such duty, payable from the $2,000 appropriation for "Inspection of material pertaining to Field Artillery and Signal Corps in the hands of the National Guard" (39 Stat. 647). (War Dept. Bull. 3, Jan. 19, 1917.)

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judgment of the Secretary of War, be necessary for the purposes enumerated therein. He shall render, through the War Department, such accounts of Federal funds intrusted to him for disbursement as may be required by the Treasury Department. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the Secretary of War, for the faithful performance of his duties and for the safe-keeping and proper disposition of the Federal property and funds intrusted to his care. He shall, after having qualified as property and disbursing officer, receive pay for his services at a rate to be fixed by the Secretary of War, and such compensation shall be a charge against the whole sum annually appropriated for the support of the National Guard. *Id. 209.*

1351e. *Same—Expenses of while traveling on official duty.*—When traveling in the performance of his official duties under orders issued by the proper authorities he shall be reimbursed for his actual necessary traveling expenses, the sum to be made a charge against the allotment of the State, Territory, or District of Columbia. *Id.*

1351f. *Same—Annual inspection of property and accounts by an inspector general of the Army.*—The Secretary of War shall cause an inspection of the accounts and records of the property and disbursing officer to be made by an inspector general of the Army at least once each year. *Id.*

1351g. *Secretary of War to make necessary rules and regulations for enforcing foregoing provisions.*—The Secretary of War is empowered to make all rules and regulations necessary to carry into effect the provisions of this section. *Id.*

1351h. *Noncompliance with this Act by any State or Territory debarres it from pecuniary benefit, etc.*—Whenever any State shall, within a limit of time to be fixed by the President, have failed or refused to comply with or enforce any requirement of this Act, or any regulation promulgated thereunder and in aid thereof by the President or the Secretary of War, the National Guard of such State shall be debarred, wholly or in part, as the President may direct, from receiving from the United States any pecuniary or other aid, benefit, or privilege authorized or provided by this Act or any other law. *Sec. 116, id. 212.*

1354a. *Purchase from War Department of articles issued by its supply departments to Army.*—Whenever it shall be shown to the satisfaction of the Secretary of War that the National Guard of any State, Territory, or the District of Columbia, is properly organized, armed, and equipped for field service, funds allotted to that State, Territory, or District for the support of its National Guard may be used for the purchase, from the War Department, of any article

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issued by any of the supply departments of the Army. *Sec. 83, id. 204.*

(For the provisions of this section preceding this paragraph see paragraphs 1358a, and 1358b.)

1354b. *Same—Purchase of stores, supplies, material of war, and military publications.*—Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department for the use of the National Guard, including the officers thereof, any stores, supplies, material of war, and military publications furnished to the Army, in addition to those issued under the provisions of this Act, at the price at which they shall be listed to the Army, with cost of transportation added. The funds received from such sale shall be credited to the appropriation to which they shall belong, shall not be covered into the Treasury, and shall be available until expended to replace therewith the supplies sold to the States in the manner herein authorized. *Sec. 86, id.*

(For the ensuing provision of this section see paragraph 1366a.)

1355a. *Secretary of War to submit annual estimates of amount necessary for.*—The Secretary of War shall cause to be estimated annually the amount necessary for carrying out the provisions of so much of this Act as relates to the militia, and no money shall be expended under said provisions except as shall from time to time be appropriated for carrying them out. *Sec. 119, id. 213.*

1355b. *Appropriation for arms, equipment, stores, supplies, etc., and such other expenses as may be authorized by law.*—For providing arms, ordnance stores, quartermaster stores, camp equipage, and all other military supplies for issue to the National Guard; for the promotion of rifle practice, including the acquisition, construction, maintenance and equipment of shooting galleries and suitable target ranges; for the hire of horses and draft animals for the use of mounted troops, batteries, and wagons; for forage for the same; and for such other incidental expenses in connection with lawfully authorized encampments, maneuvers, and field instruction as the Secretary of War may deem necessary; and for such other expenses pertaining to the National Guard as are now or may hereafter be authorized by law, $1,000,000. *Act of Aug. 29, 1916 (39 Stat. 646).*

1355c. *Appropriation for arms, uniform, equipment, etc., for National Guard.*—To procure by purchase or manufacture and issue from time to time to the National Guard upon requisition of the governors of the several States and Territories, or the commanding general, National Guard of the District of Columbia, such number of United States service arms with all accessories, Field Artillery and Coast Artillery material, engineer, signal, and sanitary material,

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accouterments, field uniforms, clothing, equipage, publications, and military stores of all kinds, including public animals, as are necessary to arm, uniform, and equip for field service the National Guard in the several States, Territories, and the District of Columbia.[1] *Id. 647.*

1355d. *Same—Available for material and equipment for instruction of members of National Guard at Aviation School.*—Of the sum herein appropriated, $76,000, or so much thereof as may be required, may, in the discretion of the Secretary of War, be made available for the purchase and maintenance of material and equipment necessary for the proper instruction in military aviation of such officers and enlisted men of the National Guard as may be authorized by the War Department to attend the United States Aviation School. *Id.*

1355e. *All money appropriated for arming, equipping, and training the National Guard to constitute one fund.*—All the money hereinbefore appropriated for arming, equipping, and training the National Guard shall be disbursed and accounted for as such, and for that purpose shall constitute one fund. *Id.*

1356a. *Annual inspection by an inspector general as to property, organization, personnel, equipment, etc.*—The Secretary of War shall cause an inspection to be made at least once each year by inspectors general and if necessary by other officers of the Regular Army detailed by him for that purpose to determine whether the amount and condition of the property in the hands of the National Guard is satisfactory; whether the National Guard is organized as hereinbefore prescribed; whether the officers and enlisted men possess the physical and other qualifications prescribed; whether the organization and the officers and enlisted men thereof are sufficiently armed, uniformed, equipped, and being trained and instructed for active duty in the field or coast defense, and whether the records are being kept in accordance with the requirements of this Act. *Sec. 93, Act of June 3, 1916 (39 Stat. 206).*

1356b. *Same—Report to serve as basis for issue and retention of military property and for determining what organizations, etc., constitute part of National Guard.*—The reports of such inspections shall serve as the basis for deciding as to the issue to and retention by the National Guard of the military property provided for by this Act, and for determining what organizations and individuals shall be considered as constituting parts of the National Guard within the meaning of this Act. *Id.*

1358a. *Cost of ordnance issued to militia to be credited to appropriation.*—Hereafter the cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and

[1] The total appropriation authorized in paragraph 1355c is $2,000,000.

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District of Columbia, under the Act of February twelfth, eighteen hundred and eighty-seven,[1] shall be credited to the appropriation for "manufacture of arms at national armories," and used to procure like ordnance stores, and that said appropriation shall be available until exhausted, not exceeding two years. *Act of June 13, 1890 (26 Stat. 156).*

1358b. *Supply of arms and equipment.*—The Secretary of War is hereby authorized to procure, under such regulations as the President may prescribe, by purchase or manufacture, within the limits of available appropriations made by Congress, and to issue from time to time to the National Guard, upon requisition of the governors of the Several States and Territories or the commanding general of the National Guard of the District of Columbia, such number of United States service arms, with all accessories, Field Artillery matériel, Engineer, Coast Artillery, signal and sanitary matériel, accouterments, field uniforms, clothing, equipage publications and military stores of all kinds, including public animals, as are necessary to arm, uniform, and equip for field service the National Guard in the several States, Territories, and the District of Columbia. *Sec. 83, Act of June 3, 1916 (39 Stat. 203).*

1358c. *Same—Care and protection of.*—As a condition precedent to the issue of any property as provided for by this Act, the State, Territory, or the District of Columbia desiring such issue shall make adequate provision, to the satisfaction of the Secretary of War, for the protection and care of such property. *Id. 204.*

(For ensuing provision of this section see paragraph 1354a, *ante.*)

1359a. *New property issued to replace obsolete or condemned prior issues.*—Each State, Territory, and the District of Columbia shall, on the receipt of new property issued to replace obsolete or condemned prior issues, turn in to the War Department or otherwise dispose of, in accordance with the directions of the Secretary of War, all property so replaced or condemned, and shall not receive any money credit therefor. *Sec. 85, id.*

1359b. *Disposition and replacement of damaged or destroyed property.*—All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in any State or Territory or the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall

[1] The Act of Feb. 12, 1887 (24 Stat. 401), was an Act to amend section sixteen hundred and sixty-one of the Revised Statutes, making an annual appropriation to provide arms and equipment for the militia.

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be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the State or Territory or the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable State, Territory, or District of Columbia, to be paid from State, Territory, or District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition, by sale or otherwise, shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from any State, Territory, or District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to said State, Territory, or the District of Columbia, accountable for said property, and as a part of and in addition to that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war. *Sec. 87, id.*

1359c. *Same—Penalty on failure of State or Territory to pay for lost or damaged property charged against it.*—If any State, Territory, or the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against such State, Territory, or the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar such State, Territory, or the District of Columbia from further participation in any and all appropriations for the National Guard until such payments shall have been made. *Id. 205.*

1359d. *Same—Disposition of proceeds of sales of condemned stores not charged to State allotments.*—The net proceeds of the sale of condemned stores issued to the National Guard and not charged to State allotments shall be covered into the Treasury of the United States, as shall also stoppages against officers and enlisted men, and the net proceeds of collections made from any person to reimburse the Government for the loss, damage, or destruction of said property not charged against the State allotment issued for the use of the National Guard. *Sec. 88, id.*

1359e. *Removal of accountability for issued property lost or destroyed prior to December 31, 1911.*—The Secretary of War is hereby

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authorized to relieve any State, Territory, or the District of Columbia from further accountability for all United States property issued thereto for the use of the Organized Militia thereof which the records of the War Department show to have been lost or destroyed prior to December thirty-first, nineteen hundred and eleven. *Act of Aug. 29, 1916 (39 Stat. 646).*

1361a. *Arms, equipment, and uniform to be same as for Regular Army.*—The National Guard of the United States shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipments as are or shall be provided for the Regular Army. *Sec. 82, Act of June 3, 1916 (39 Stat. 203).*

1361b. *Supplying and exchanging Infantry equipment, National Guard.*—For the purpose of manufacturing, procuring, exchanging, and issuing model of nineteen hundred and ten equipment to the Infantry and other dismounted organizations of the National Guard of the several States, Territories, and the District of Columbia: *Provided*, That whenever in the opinion of the Secretary of War a sufficient number of Infantry equipment, model of nineteen hundred and ten, shall have been procured and shall be available for the purpose the Secretary of War is hereby authorized to issue on the requisition of the governors of the several States and Territories, or the commanding general of the District of Columbia National Guard, such numbers thereof as are required for equipping the National Guard in said States, Territories, and the District of Columbia, without charging the cost or value thereof or any expenses connected therewith against any allotments to said States, Territories, or the District of Columbia. *Act of Aug. 29, 1916 (39 Stat. 647).*

1361c. *Same—To remain the property of United States and be annually accounted for.*—The equipment thus issued shall be receipted for and shall remain the property of the United States and be annually accounted for by the governors of the several States, Territories, and the commanding general of the District of Columbia National Guard as now required by law, and that each State, Territory, and the District of Columbia shall, upon receipt of new equipment, turn in to the Ordnance Department of the United States Army, without receiving any money credit therefor and without expense for transportation of Infantry equipment now in its possession, the property of the United States, and replaced by articles of the model of nineteen hundred and ten equipment, $400,000. *Id. 648.*

1364a. *Field Artillery, Organized Militia, horses for, care of same, etc.*—For the purpose of this section the total number of horses shall not exceed thirty-two to any one battery or four to each battalion or regimental headquarters, and that such horses shall be used exclusively for Field Artillery purposes: *And provided further*, That the men to be so compensated, not to exceed five for each battery,

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shall be duly enlisted therein and shall be detailed by the battery commander under such regulations as the Secretary of War may prescribe, and shall be paid by the United States disbursing officer in each State provided for in the Act of January twenty-first, nineteen hundred and three, entitled, "An Act to promote the efficiency of the Militia, and for other purposes," as amended. *Act of Mar. 4, 1915 (38 Stat. 1071).*

1364b. *Same—Horses to conform to standards for Regular Army and remain property of United States, etc.*—The funds appropriated by section sixteen hundred and sixty-one, Revised Statutes, and by the Act entitled "An Act to promote the efficiency of the militia, and for other purposes," approved May twenty-seventh, nineteen hundred and eight, as amended, shall be available for the purchase, under such regulations as the Secretary of War may prescribe, of horses conforming to the Regular Army standards, said horses to remain the property of the United States and to be for the sole continuous use of the Field Artillery of the Organized Militia. *Id.*

1364c. *Same—Secretary of War may issue condemned Army horses to.*—The Secretary of War may, under the provisions of this Act and such regulations as he may prescribe, issue to the Field Artillery organizations hereinbefore mentioned and without cost to the State condemned Army horses which are no longer fit for service but may still be suitable for purposes of instruction, the same to be sold as now provided by law when the latter purpose has been served. *Id. 1072.*

1364d. *Field Artillery material for Organized Militia, accounting for.*—For the purpose of procuring Field Artillery material for the Organized Militia of the several States, Territories, and the District of Columbia, without cost to the said States, Territories, or the District of Columbia, but to remain the property of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories, or the commanding general of the Militia of the District of Columbia, to issue said Artillery material to the Organized Militia; and the sum of $1,000,000 is hereby appropriated and made immediately available and to remain available until the end of the fiscal year nineteen hundred and fifteen for the procurement and issue of the articles constituting the same. *Act of Mar. 2, 1913 (37 Stat. 721).*

1364e. *Same.*—For the purpose of manufacturing Field Artillery material for the Organized Militia of the several States, Territories, and the District of Columbia, without cost to the said States, Territories, or the District of Columbia, but to remain the property

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of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories or the commanding general of the Militia of the District of Columbia, to issue said Artillery material to the Organized Militia; and the sum of $2,090,000 is hereby appropriated and made immediately available and to remain available until the end of the fiscal year nineteen hundred and seventeen, for the manufacture and issue of the articles constituting the same.

Provided, That not more than $170,000 of this appropriation may be used for the purchase of Field Artillery material. *Act of Mar. 4, 1915 (38 Stat. 1083)*.

1364f. *Field artillery material for the National Guard.*—For the purpose of manufacturing field artillery material for the National Guard of the several States, Territories, and the District of Columbia, but to remain the property of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories or the commanding general of the National Guard of the District of Columbia, to issue said artillery material to the National Guard; and the sum of $10,000,000 is hereby appropriated and made immediately available and to remain available until the end of the fiscal year nineteen hundred and eighteen, for the manufacture and issue of the articles constituting the same: *Provided*, That not more than $5,000,000 of this appropriation may be used for the purchase of field artillery material. *Act of Aug. 29, 1916 (39 Stat. 644)*.

1364g. *Field artillery ammunition for the Organized Militia.*—For the purpose of manufacturing reserve ammunition for Field Artillery for the Organized Militia for the several States, Territories, and the District of Columbia, the funds to be immediately available and to remain available until the end of the fiscal year ending June thirtieth, nineteen hundred and seventeen, $2,900,000.

Provided, That not more than $100,000 of this appropriation may be used in the purchase of field artillery reserve ammunitions. *Act of Mar. 4, 1915 (38 Stat. 1083)*.

1364h. *Ammunition for Field Artillery for the National Guard.*—For the purpose of manufacturing reserve ammunition for Field Artillery for the National Guard of the several States, Territories, and the District of Columbia, the funds to be immediately available, and to remain available until the end of the fiscal year ending June thirtieth, nineteen hundred and eighteen, $10,000,000.

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Provided, That not more than $5,000,000 of this appropriation may be used in the purchase of field artillery reserve ammunition. *Act of Aug. 29, 1916 (39 Stat. 644).*

1364i. *Funds allotted available for purchase of horses for Field Artillery and Cavalry.*—Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase, under such regulations as the Secretary of War may prescribe, of horses conforming to the Regular Army standards for the use of Field Artillery and Cavalry of the National Guard, said horses to remain the property of the United States and to be used solely for military purposes. *Sec. 89, Act of June 3, 1916 (39 Stat. 205).*

1364j. *Same—Number to be issued to battery or troop, or issuance of condemned Army Horses in lieu of purchase.*—Horses so purchased may be issued not to exceed thirty-two to any one battery or troop, under such regulations as the Secretary of War may prescribe, and the Secretary of War is further authorized to issue, in lieu of purchase, for the use of such organizations, condemned Army horses which are no longer fit for service, but which may be suitable for the purposes of instruction, such horses to be sold as now provided by law when said purposes shall have been served. *Id.*

1364k. *Same—Forage, bedding, shoeing, and care of, etc.*—Funds allotted by the Secretary of War for the support of the National Guard shall be available for the purchase and issue of forage, bedding, shoeing, and veterinary services, and supplies for the Government horses issued to any battery or troop, and for the compensation of competent help for the care of the material, animals, and equipment thereof, under such regulations as the Secretary of War may prescribe. *Sec. 90, id.*

1364l. *Same—Not to exceed five enlisted men for each battery or troop to be detailed for care of.*—The men to be compensated, not to exceed five for each battery or troop, shall be duly enlisted therein and shall be detailed by the battery or troop commander, under such regulations as the Secretary of War may prescribe, and shall be paid by the United States disbursing officer in each State, Territory, and the District of Columbia. *Id.*

1364m. *Horses for Field Artillery, Cavalry, and other mounted units of National Guard.*—To provide for the purchase, under such regulations as the Secretary of War may prescribe, of horses conforming to the Regular Army standards for the use of Field Artillery, Cavalry, signal companies, engineer companies, ambulance companies, and other mounted units of the National Guard, said horses to remain the property of the United States and to be used solely for military purposes. Horses so purchased may be issued not to

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exceed thirty-two to any one battery, troop, or company, or four to a battalion or regimental headquarters, under such regulations as the Secretary of War may prescribe. *Act of Aug. 29, 1916 (39 Stat. 645).*

1364n. *Compensation for care of material, animals, and equipment.*—To provide for the compensation of competent help for the care of matériel, animals, and equipment thereof, under such regulations as the Secretary of War may prescribe: *Provided*, That the men to be compensated, not to exceed five for each battery, troop, or company, shall be duly enlisted therein and shall be detailed by the battery, troop, or company commander under such regulations as the Secretary of War may prescribe, and shall be paid by the United States disbursing officer in each State, Territory, and the District of Columbia. *Id.*

1365a. *Supplying new types of small arms or field guns.*—Under such regulations as the President may prescribe, whenever a new type of equipment, small arm, or field gun shall have been issued to the National Guard of the several States, Territories, and the District of Columbia, such equipment, small arms, and field guns, including all accessories, shall be furnished without charging the cost or value thereof or any expense connected therewith against the appropriations provided for the support of the National Guard. *Sec. 84, Act of June 3, 1916 (39 Stat. 204).*

1366a. *Stores, supplies, and matériel of war purchased by States and Territories may, in time of war, be requisitioned by United States.*—Stores, supplies, and matériel of war so purchased by a State, Territory, or the District of Columbia may, in time of actual or threatened war, be requisitioned by the United States for use in the military service thereof, and when so requisitioned by the United States and delivered credit for the ultimate return of such property in kind shall be allowed to such State, Territory, or the District of Columbia. *Sec. 86, id.*

[For the preceding provision of this section see paragraph 1354b.]

1367a. *Militia Coast Artillery, equipment of armories.—Equipment of armories.*—Equipment of Coast Artillery, armories, Organized Militia.—Dummy guns and mortars, mounts for dummy guns and mortars, dummy ammunition, loading appliances, range and position finding equipment, aiming and laying devices, subcaliber tubes and mountings therefor, labor and material necessary to install dummy guns and mortars, and to provide appliances and devices for instructional purposes in armory buildings provided by States for Coast Artillery companies of the Organized Militia, to be immediately available and to remain available until expended, * * *. *Act of Apr. 27, 1914 (38 Stat. 360).*

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1372a. *District of Columbia, lease of armory, etc., for.*—The commanding general of the Militia of the District of Columbia is authorized to enter into a contract or contracts for the lease of an armory, stable, drill shed, and warehouse for Cavalry, Field Artillery, Signal Corps, and Hospital Corps troops in one building, or separately, for a period not to exceed five years, renewable at the option of the said commanding general for an additional period of not exceeding five years, at an annual rental not to exceed $10,000. ***Act of Mar. 3, 1917*** *(Pub. No. 378, 39 Stat. —).*

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CHAPTER XXXII.

VOLUNTEERS.

Par.
Pay and allowances of ..... 1394a.

VOLUNTEERS.

1394a. *Pay and allowances of.*—In all matters relating to the pay and allowances of officers and soldiers of the Army of the United States, the same rules and regulations shall apply to the Regular Army and to volunteer forces mustered into the service of the United States for a limited period. *Sec. 1292, R. S.*

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CHAPTER XXXIII.

INDIANS—INDIAN AGENTS—INDIAN COUNTRY.

Par.
Prohibition of permits to Indians to go into Texas repealed..... 1413a.

1413a. ***Prohibition of permits to Indians to go into Texas repealed.***—So much of section four of the Act of May eleventh, eighteen hundred and eighty (Twenty-first Statutes at Large, page one hundred and thirty-two), as prohibits granting permission in writing or otherwise to any Indian or Indians on any Indian reservation to go into the State of Texas, under any pretext whatever, be, and the same is hereby, repealed. *Act of May 18, 1916 (39 Stat. 128).*

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CHAPTER XXXIV.

THE EMPLOYMENT OF MILITARY FORCE.

	Par.
Neutrality	1469a–1472b
Withholding clearance from vessels violating, during existence of war to which United States is not a party	1469a
Same—Penalty for vessels departing jurisdiction of United States without clearance	1469b
Restrictions on importations from United States under laws of belligerent, penalty for	1469c
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Restrictions under belligerent laws on commerce of American ships or citizens, penalty for	1469e
Same—Penalty for vessels departing without clearance	1469f
Same—President authorized to use land or naval forces for enforcement of act	1469g
Same—President authorized to use land or naval forces to prevent violation	1472a
Same—Extends to all land and water, continental or insular, within jurisdiction of United States	1472b
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Employment of armed force in by President justified	1475a
Same—Hostility to Mexican people disclaimed	1475b

NEUTRALITY.

1469a. *Withholding clearance from vessels violating, during existence of war to which the United States is not a party.*—From and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United

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States as a neutral nation. *Joint resolution No. 14, Mar. 4, 1915 (38 Stat. 1226).*

1469b. *Same—Penalty for vessels departing jurisdiction of United States without clearance.*—In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States. *Id.*

1469c. *Restrictions on importations from United States under laws of belligerent, penalty for.*—Whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt to conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion. *Sec. 805, Act of Sept. 8, 1916 (39 Stat. 799).*

1469d. *Vessels under belligerent laws discriminating against citizens of United States, penalty for.*—Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United

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States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight or passengers, or in any other respect whatsoever, he is hereby authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction. *Sec. 806, id.*

1469e. *Restrictions under belligerent laws on commerce of American ships or citizens, penalty for.*—Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is hereby authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt to conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. *Id. 800.*

1469f. *Same—Penalty for vessels departing without clearance.*—In case any vessel which is detained by virtue of this Act shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such

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vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition, such vessel shall be forfeited to the United States. *Id.*

1469g. *Same—President authorized to use land or naval forces for enforcement of Act.*—The President of the United States is hereby authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purpose of this Act. *Id.*

1472a. *Same—President authorized to use land or naval forces to prevent violation.*—The President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution. *Joint resolution No. 14, Mar. 4, 1915 (38 Stat. 1226).*

1472b. *Same—Extends to all land and water, continental or insular, within jurisdiction of United States.*—The provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States. *Id. 1227.*

MEXICO.

1475a. *Employment of armed force in, by President justified.*—The President is justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States. *Joint resolution No. 10, Apr. 22, 1914 (38 Stat. 770).*

1475b. *Same—Hostility to Mexican people disclaimed.*—The United States disclaims any hostility to the Mexican people or any purpose to make war upon Mexico. *Id.*

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CHAPTER XXXV.

PENSION LAWS.

	Par.
Widows' pensions	1498a–1498g
Increase in rate of	1498a
Restoration of widow who was dropped on remarriage but has again become a widow, etc	1498b
Same—Where pension after second or subsequent marriage accrued to helpless or idiotic child	1498c
Same—Extended to certain widows who are barred under existing law because of remarriage, etc	1498d
Pension to widows married prior to June 27, 1905	1498e
Same—Where pension has been granted to helpless or idiotic children	1498f
Restrictions as to fee of claim agents under provisions of act	1498g

WIDOWS' PENSIONS.

1498a. *Increase in rate of.*—From and after the passage of this Act the rate of pension for a widow, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereinafter provided, who was the lawful wife of any officer or enlisted man in the Army, Navy, or Marine Corps of the United States, during the period of his services in the Civil War, shall be $20 per month, and the rate of pension for a widow of an officer or enlisted man of the Army, Navy, or Marine Corps of the United States who served in the Civil War, the War with Mexico, or the War of Eighteen hundred and twelve, now on the roll or hereafter to be placed on the pension roll and entitled to receive a less rate than hereafter provided, who has reached or shall hereafter reach the age of seventy years shall be $20 per month; and nothing herein shall be construed to affect the existing allowance of $2 per month for each child under the age of sixteen years and for each helpless child; and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. *Sec. 1, Act of Sept. 8, 1916 (39 Stat. 844.)*

1498b. *Restoration of widow who was dropped on remarriage but has again become a widow, etc.*—Any widow of an officer or enlisted man who served in the Army, Navy, or Marine Corps of the United

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States during the Civil War whose name was placed or shall hereafter be placed on the pension roll, under any existing law, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced upon her own application and without fault on her part, shall be entitled to have her name again placed on the pension roll at the rate allowed by the law under which she was formerly pensioned, and the law or laws amendatory thereof, unless she be entitled to a greater rate of pension under the provisions of section one of this Act, such pension to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act. *Sec. 2, id. 845.*

1498c. *Same—Where pension after second or subsequent marriage accrued to helpless or idiotic child.*—Where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to renewal under this Act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the renewal of pension to said widow payment of pension to said child or children shall cease. *Id.*

1498d. *Same—Extended to certain widows who were barred under existing law because of remarriage, etc.*—The provisions of this Act shall be extended to those widows, otherwise entitled, whose husbands died of wounds, injuries, or disease incurred during the period of their military or naval service, but who were deprived of pension under the Act of March third, eighteen hundred and sixty-five, because of their failure to draw any pensions by reason of their remarriage, and to any person who was lawfully married to an officer or enlisted man, who served in the Army, Navy, or Marine Corps of the United States during the Civil War and was honorably discharged therefrom and has since deceased, and who, having remarried since his death is again a widow, or has been divorced from her last husband upon her own application without fault on her part and who, otherwise entitled, was barred by reason of such remarriage from receiving pension under any existing law. *Id.*

1498e. *Pension to widows married prior to June twenty-seventh, nineteen hundred and five.*—Any widow, as described in section two of the Act approved April nineteenth, nineteen hundred and eight,[1] who married the soldier or sailor prior to June twenty-seventh, nineteen hundred and five, shall have title to pension under the provisions

[1] Sec. 2 of Act referred to (35 Stat. 64), provides for a pension for widows of soldiers and sailors who served ninety days, etc., provided the widow shall have married the soldier or sailor prior to June 27, 1890.

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of said section of said Act, to commence from the date of filing her application in the Bureau of Pensions after the passage of this Act. *Sec. 3, id.*

1498f. *Same—Where pension has been granted to helpless or idiotic children.*—Where a pension has been granted to a soldier's or sailor's helpless or idiotic child or children, or child or children under the age of sixteen years, his widow shall not be entitled to pension under this section, unless the pension to such child or children has terminated, or unless such child or children be a member or members of her family and cared for by her, and upon allowance of pension to the widow, payment of pension to such child or children shall cease. *Id.*

1498g. *Restrictions as to fee of claim agents under provisions of Act.*—No claim agent or attorney shall be recognized in the adjudication of claims under the first section of this Act, nor shall any claim agent or attorney be recognized in the adjudication of claims under the second section of this Act for renewal of pension previously allowed, and in claims for original pension under section two of this Act no greater sum than $10 shall be allowed for services in preparing, presenting, or prosecuting such claim, which sum shall be payable only upon the order of the Commissioner of Pensions under such rules and regulations as he may deem proper to make. *Sec. 4, id.*

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CHAPTER XXXVI.

THE SOLDIERS' HOME.

Par.
Pay and allowances of soldiers sentenced to dishonorable discharge during execution of suspended sentence 1507a

1507a. *Pay and allowances of soldiers sentenced to dishonorable discharge during execution of suspended sentence.*—Hereafter pay and allowances shall not accrue to a soldier under sentence of dishonorable discharge, during such period as the execution of the sentence of discharge may be suspended under authority of the Act of Congress approved April twenty-seventh, nineteen hundred and fourteen, and pay which has heretofore been forfeited under such suspended sentence shall not be held to have accrued to the Soldiers' Home under the operation of section forty-eight hundred and eighteen, Revised Statutes, but shall be covered back into the Treasury of the United States. *Act of Mar. 4, 1915 (38 Stat. 1065).*

(This provision will also be found under paragraph 727a.)

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CHAPTER XXXVIII.

FLAG AND SEAL OF THE UNITED STATES.

	Par.		Par.
The flag in the District of Columbia, desecration, mutilation, or improper use of	1529a	Same—Flag, standard, colors, etc., defined	1529b

1529a. *The flag in the District of Columbia, desecration, mutilation, or improper use of.*—Hereafter any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. *Act of Feb. 8, 1917 (Pub. No. 305, 39 Stat. ——).*

1529b. *Same—Flag, standard, colors, etc., defined.*—The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or

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represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the Stars and Stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. *Id.*

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CHAPTER XL.

RESERVE CORPS.

	Par.
Officers' Reserve Corps	1532–1552
Composition and object of	1532
President alone authorized to appoint and commission officers in to all grades up to and including major	1533
Same—Proportion of officers in any section not to exceed proportion of same grade in Regular Army	1534
Persons registered as qualified under Act of January 21, 1903, to be eligible for appointment in for three years	1535
Same—Persons qualified for grade of lieutenant colonel or colonel to be appointed as such, but when they become separated from the corps the grades to cease and determine	1536
Age limit for appointment in and discharge of officers after having passed such limit	1537
Same—Not to apply to appointment or reappointment of officers in certain staff departments	1538
Medical Reserve Corps to cease to exist one year after passage of Act; officers of may be appointed to Officers' Reserve Corps	1539
Certain officers of the medical section, Officers' Reserve Corps, may be assigned to active duty in time of peace; pay of	1540
Commissions to be in force for a period of five years	1541
Same—May be recommissioned for successive periods in same or higher grades	1542
Rank of officers in various sections to be according to grades and length of service therein	1543
Assignment to duty in time of war, rank, pay, etc	1544
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Officers of not entitled to retirement or retired pay; pensionable status	1546
Subject to rules and articles of War when ordered to active service	1547
May be ordered to duty with troops, etc., for instruction	1548
Same—Period of instruction may be extended with consent of reserve officers	1549
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Par.

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Same—Not to be established until after officer of Army has been detailed at the institution as professor of military science and tactics..... 1555
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Eligibility for membership in, as to age, citizenship, etc..... 1559
Detail of active or retired officers as professors for; rank, pay, term, conditions, etc..... 1560
Same—Detail of enlisted men, active, retired, or Regular Army Reserve; limit as to active, who are to be additional etc 1561
Issue of public animals, arms, uniform, equipment, etc., to institutions with established units 1562
Issue of military equipment and detail of instructors at other schools and colleges..... 1563
Camps for additional training of members of; period of encampment, equipment, etc..... 1564
President alone may appoint qualified graduates of, in Officers' Reserve Corps; conditions 1565

Par.

Same—Qualified graduates not eligible for appointment while undergoing postgraduate course..... 1566
Members who have completed two years of training may be furnished with commutation of subsistence for remainder of course of training..... 1567
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Appointment of prior graduates of institutions giving military training to Officers' Reserve Corps and as temporary additional second lieutenants; age limit, citizenship, etc..... 1569
Appointment by President alone of reserve officers as temporary second lieutenants of Regular Army in time of peace for instruction..... 1570
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In time of war reserve officers may be assigned to active duty in any grades, not below second lieutenant, and are subject to rules and articles of war..... 1572
Adjutant General to keep revised list of civilians who have had military training qualifying them for appointment as commissioned officers 1573
Camps of instruction for training civilians, equipment, etc., of..... 1574
Same—Secretary of War to prescribe course of instructions at, and detail Regular officers and enlisted men for duty in connection with 1575
Appropriation for maintenance of camps on military reservations, etc., for training civilians..... 1576

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	Par.
Same—Available for transportation and subsistence of citizens between certain ages who have attended camps during 1916	1577
Training camp for civilians on military reservation at Fort Douglas, Utah, maintenance of	1578
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Enlisted reserve for staff departments	1581
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Rosettes or knots to be issued to members attending at least one encampment for military instruction of citizens	1583
Same—Penalty for unauthorized wearing of	1584
Assignment of members to organizations of Regular Army or organization of, into units or detachments of any arm, etc	1585
May be ordered to active service annually for purpose of instruction or training	1586
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Same—Pay and allowances while in active service	1588
Not entitled to retirement or retirement pay; pensionable status	1589
Uniform to be same as for enlisted men of Regular Army and to be issued in kind	1590
Same—Clothing or other equipment to remain property of United States	1591
Same—Unserviceable to be replaced	1592
Arms, clothing, and equipment issued to be accounted for on discharge	1593
Enlisted men ordered to active service subject to Rules and Articles of War	1594
May be discharged when service no longer required or for misconduct	1595
Certificate of enlistment forfeited, in addition to other punishment, for failure to obey order assigning to active duty	1596
In time of actual or threatened hostilities may be ordered to active duty with Regular Army	1597
Same—May be mustered into the Volunteer service with grades held in their corps	1598
Same—Certificate of enlistment does not give vester right to be so mustered	1599

OFFICERS' RESERVE CORPS.

1532. *Composition and object of.*—For the purpose of securing a reserve of officers available for service as temporary officers in the Regular Army, as provided for in this Act and in section eight of the Act approved April twenty-fifth, nineteen hundred and fourteen,[1] as officers of the Quartermaster Corps and other staff corps and departments, as officers for recruit rendezvous and depots, and as officers of volunteers, there shall be organized, under such rules and

[1] See par. 1389, *ante*, or 38 Stat. 349.

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regulations as the President may prescribe not inconsistent with the provisions of this Act, an Officers' Reserve Corps of the Regular Army. Said corps shall consist of sections corresponding to the various arms, staff corps, and departments of the Regular Army.[1] Except as otherwise herein provided, a member of the Officers' Reserve Corps shall not be subject to call for service in time of peace, and whenever called upon for service shall not, without his consent, be so called in a lower grade than that held by him in said reserve corps. *Sec. 37, Act of June 3, 1916 (39 Stat. 189).*

1533. *President alone authorized to appoint and commission officers in all grades up to and including major.*—The President alone shall be authorized to appoint and commission as reserve officers in the various sections of the Officers' Reserve Corps, in all grades up to and including that of major, such citizens as, upon examination prescribed by the President, shall be found physically, mentally, and morally qualified to hold such commissions. *Id.*

1534. *Same—Proportion of officers in any section not to exceed proportion of same grade in Regular Army.*—The proportion of officers in any section of the Officers' Reserve Corps shall not exceed the proportion for the same grade in the corresponding arm, corps, or department of the Regular Army, except that the number commissioned

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[1] *Held*, that there are no organizational grades in the Veterinary Corps nor in the Dental Corps and that, therefore, veterinarians can be appointed in the Officers' Reserve Corps only as assistant veterinarians with the rank of second lieutenant, and dental surgeons may be appointed therein only as first lieutenant, and that in neither case can the officer attain a higher rank except through active service for the time prescribed for the attainment of higher rank.

Held further, that as to the Medical Department, the three corps, Medical, Dental, and Veterinary, are to be regarded as separate and distinct corps, for the purpose of determining the proportionate number of officers to be commissioned in the Officers' Reserve Corps; and that the proportion of the grades in the Medical Section proper of the Officers' Reserve Corps should be determined by the proportion which the number in the corresponding grades in the Medical Corps of the Regular Army bear to the total number of officers in the Medical Corps of the Regular Army, the grades of captain and first lieutenant in the Medical Corps of the Regular Army being considered one grade, that of first lieutenant, in making the computation; and that the appointments to the dental and veterinary sections of the Officers' Reserve Corps, being only to the lowest in each, will be unlimited in that grade.

Held further, that for purposes of appointment in the Officers' Reserve Corps the lowest authorized grade in the Quartermaster Corps is that of captain, to which grade in the Officers' Reserve Corps appointments may be unlimited.

Held further, that the Signal Corps proper and the Aviation Section each constitutes a corps which should form the basis of an organization in the Officers' Reserve Corps, the lowest grade in the Signal Corps being that of first lieutenant. As to the Aviation Section, *held*, that the grade of aviator, provided for in sec. 13 of the national-defense act, was created as a means of meeting contingencies and supplying casual deficiencies, and should be regarded as temporary and not as a permanent grade or integral part of the Aviation Section, such as should be made a basis for appointments in the Officers' Reserve Corps, but the lowest grade of the Aviation Section in which an unlimited number of officers may be appointed is that of first lieutenant. (War Dept. Bull. 34, Sept. 12, 1916.)

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in the lowest authorized grade in any section of the Officers' Reserve Corps shall not be limited.[1] *Id.*

1535. *Persons registered as qualified under Act of January 21, 1903, to be eligible for appointment in for three years.*—All persons now carried as duly qualified and registered pursuant to section twenty-three of the Act of Congress approved January twenty-first, nineteen hundred and three,[2] shall, for a period of three years after the passage of this Act, be eligible for appointment in the Officers' Reserve Corps in the section corresponding to the arm, corps, or department for which they have been found qualified, without further examination, except a physical examination, and subject to the limitations as to age and rank herein prescribed.[3] *Id.*

1536. *Same—Persons qualified for grade of lieutenant colonel or colonel to be appointed as such, but when they become separated from the corps the grades to cease and determine.*—Any person carried as qualified and registered in the grade of colonel or lieutenant colonel pursuant to the provisions of said Act on the date when this Act becomes effective may be commissioned and recommissioned in the Officers' Reserve Corps with the rank for which he has been found qualified and registered, but when such person thereafter shall become separated from the Officers' Reserve Corps for any reason the vacancy so caused shall not be filled, and such office shall cease and determine. *Id.*

1537. *Age limit for appointment in and discharge of officers after having passed such limit.*—No person shall, except as hereinafter

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[1] *Held*, that this provision does not limit the number who may be commissioned in any grade above the lowest, except by the proportion which the number in that grade in the corresponding arm, corps, or department of the Regular Army bears to the number in other grades in that arm, corps, or department, and that the number that may be commissioned is unlimited so long as the proportion between grades, except as to any maximum number for the lowest, is maintained in the same manner as established for the grades of the corresponding arm, corps, or department of the Regular Army. (War. Dept. Bull. No. 28, Aug. 18, 1916.)

[2] See footnote to par, 1388, *ante*, or 32 Stat. 779.

[3] *Held*, that while this provision of the statute declares the persons therein described to be eligible for appointment in the Officers' Reserve Corps, it is not a mandate for their appointment; and, if for reasons of national policy the President may decide, as it is apparent he has decided, that persons holding commissions in available military forces of the United States shall not also be commissioned in the Officers' Reserve Corps, the provision of sec. 37 of the national-defense act just quoted is not violated. The eligibility of such officers is not interfered with, though, for the reason that they already bear a relation to the Government which is equivalent to that which would be established by their appointment in the Officers' Reserve Corps, and which renders their appointment unnecessary for the attainment of the purpose of the law creating the Officers' Reserve Corps, the President has, in his discretion, determined and ordered that they shall not be appointed.

Held further, that enlisted men of the Regular Army or National Guard who are found qualified, upon examination, may be commissioned in the Officers' Reserve Corps without impairment of their enlisted status, and that officers of the Officers' Reserve Corps, may, if otherwise eligible, enlist in the Regular Army or National Guard. (War Dept. Bull. No. 9, Feb. 2, 1917.)

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provided, be appointed or reappointed a second lieutenant in the Officers' Reserve Corps after he shall have reached the age of thirty-two years, a first lieutenant after he shall have reached the age of thirty-six years, a captain after he shall have reached the age of forty years, or a major after he shall have reached the age of forty-five years. When an officer of the Reserve Corps shall reach the age limit fixed for appointment or reappointment in the grade in which commissioned he shall be honorably discharged from the service of the United States, and be entitled to retain his official title and, on occasions of ceremony, to wear the uniform of the highest grade he shall have held in the Officers' Reserve Corps. *Id.*

1538. *Same—Not to apply to appointment or reappointment of officers in certain staff departments.*—Nothing in the foregoing provisions as to the ages of officers shall apply to the appointment or reappointment of officers of the Quartermaster, Engineer, Ordnance, Signal, Judge Advocate, and Medical sections of said Reserve Corps. *Id. 190.*

1539. *Medical Reserve Corps to cease to exist one year after passage of Act; officers of, may be appointed in Officers' Reserve Corps.*—One year after the passage of this Act the Medical Reserve Corps, as now constituted by law, shall cease to exist. Members thereof may be commissioned in the Officers' Reserve Corps, subject to the provisions of this Act, or may be honorably discharged from the service.[1] *Id.*

[For composition of the Medical Department see paragraph 728a, and for old law relating to Medical Reserve Corps see paragraphs 744–749, ante.]

1540. *Certain officers of the medical section, Officers' Reserve Corps, may be assigned to active duty in time of peace; pay of.*—The Secretary of War may, in time of peace, order first lieutenants of the medical section of the Officers' Reserve Corps, with their consent, to active duty in the service of the United States in such numbers as

[1] *Held*, that as the Act of March 4, 1911, which created the Medical Reserve Corps, conferred upon the holders of commissions issued thereunder "all authority, rights and privileges of commissioned officers of the like grade in the Medical Corps of the Army, except promotion, but only when called into active duty," and that as sec. 37 of the national-defense act makes officers of the Medical Reserve Corps eligible for appointment to the medical section of the Officers' Reserve Corps, and further that the "Medical Reserve Corps as now constituted by law" shall "cease to exist one year after the passage" of the national-defense act, the sale of ordnance or ordnance property to officers as members of the Medical Reserve Corps, such officers not being in active service, would be of doubtful legality, and recommended that such sale be not made when the officer will not be appointed to the Officers' Reserve Corps.

Held further, that par. 1520, Army Regulations, as to sales of ordnance, etc., to officers, etc., is sufficiently broad to include members of the Officers' Reserve Corps. This accords, in principle, with the opinion of the Judge Advocate General of Nov. 9, 1916, to the effect that as the Officers' Reserve Corps is an integral part of the Army of the United States as established by sec. 1 of the national-defense act, its members are entitled to purchase uniforms, clothing, and equippage under par. 1174, Army Regulations. (War Dept. Bull. No. 3, Jan. 19, 1917.)

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the public interests may require and the funds appropriated may permit, and may relieve them from such duty when their services are no longer necessary. While on such duty they shall receive the pay and allowances, including pay for periods of sickness and leaves of absence, of officers of corresponding rank and length of active service in the Regular Army. *Id.*

1541. *Commissions to be in force for a period of five years.*—The commissions of all officers of the Officers' Reserve Corps shall be in force for a period of five years unless sooner terminated in the discretion of the President. *Id.*

1542. *Same—May be recommissioned for successive periods in same or higher grades.*—Such officers may be recommissioned, either in the same or higher grades, for successive periods of five years, subject to such examinations and qualifications as the President may prescribe and to the age limits prescribed herein. *Id.*

1543. *Rank of officers in various sections to be according to grades and length of service therein.*—Officers of the Officers' Reserve Corps shall have rank therein in the various sections of said Reserve Corps according to grades and to length of service in their grades. *Id.*

1544. *Assignment to duty in time of war, rank, pay, etc.*—In time of actual or threatened hostilities the President may order officers of the Officers' Reserve Corps, subject to such subsequent physical examinations as he may prescribe, to temporary duty with the Regular Army in grades thereof which can not, for the time being, be filled by promotion, or as officers in volunteer or other organizations that may be authorized by law, or as officers at recruit rendezvous and depots, or on such other duty as the President may prescribe. While such reserve officers are on such service they shall, by virtue of their commissions as reserve officers, exercise command appropriate to their grade and rank in the organizations to which they may be assigned, and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of active service, as allowed by law for officers of the Regular Army, from the date upon which they shall be required by the terms of their orders to obey the same.[1] *Sec. 38, id.*

1545. *Same—Take temporary rank among themselves according to date of assignment to active duty; promotion to vacancies in volunteers and to temporary vacancies in Regular Army.*—Officers so ordered to active service shall take temporary rank among themselves, and in their grades in the organizations to which assigned,

[1] *Held*, that secs. 37 and 38 of the national-defense Act prescribing the duties of members of the Officers' Reserve Corps operate to limit the duties upon which such officers may be employed to activity in connection with military forces actually in the service of the United States, and that such officers are not eligible for detail, as officers of the Army, for duty at educational institutions. (War Dept. Bull. No. 39, Oct. 6, 1916.)

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according to the dates of orders placing them on active service; and they may be promoted, in accordance with such rank, to vacancies in volunteer organizations or to temporary vacancies in the Regular Army thereafter occuring in the organizations in which they shall be serving. *Id.*

1546. *Officers of not entitled to retirement or retired pay; pensionable status.*—Officers of the Officers' Reserve Corps shall not be entitled to retirement or retired pay, and shall be entitled to pension only for disability incurred in the line of duty and while in active service. *Id.*

1547. *Subject to rules and articles of war when ordered to active service.*—Any officer who, while holding a commission in the Officers' Reserve Corps, shall be ordered to active service by the Secretary of War shall, from the time he shall be required by the terms of his order to obey the same, be subject to the laws and regulations for the government of the Army of the United States, in so far as they are applicable to officers whose permanent retention in the military service is not contemplated. *Id. 191.*

1548. *May be ordered to duty with troops, etc., for instruction.*—To the extent provided for from time to time by appropriations for this specific purpose, the Secretary of War is authorized to order reserve officers to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year, and while so serving such officers shall receive the pay and allowances of their respective grades in the Regular Army.[1] *Sec. 39, id.*

1549. *Same—Period of instruction may be extended with consent of reserve officers.*—With the consent of the reserve officers concerned, and within the limit of funds available for the purpose, such periods of duty may be extended for reserve officers as the Secretary of War may direct. *Id.*

1550. *In time of war all officers of to be ordered into active service before appointment of volunteer officers.*—In time of actual or threatened hostilities, after all available officers of any section of the Officers' Reserve Corps corresponding to any arm, corps, or department of the Regular Army shall have been ordered into active service, officers of Volunteers may be appointed in such arm, corps, or department as may be authorized by law. *Id.*

1551. *Same—Does not prevent appointment of officers of Regular Army as officers of Volunteers before all officers of are ordered to active service*—Nothing herein shall operate to prevent the appointment of any officer of the Regular Army as an officer of Volunteers

[1] *Held*, that reserve officers, when ordered to active duty in accordance with secs. 37 and 39 of the national-defense act "for duty with troops," may, while in active service for such duty, be assigned to any duty in connection with such troops to which Regular Army officers serving therewith may be assigned, including duty as disbursing officers. (War Dept. Bull. No. 3, Jan. 19, 1917.)

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before all the officers of the Officers' Reserve Corps or any section thereof shall have been ordered into active service. *Id.*

(See paragraph 1388, *ante.*)

1552. *Relative rank and right to retirement of officers of Regular Army not affected by active service in.*—In determining the relative rank and the right to retirement of an officer of the Regular Army, active duty performed by him while serving in the Officers' Reserve Corps shall not be reckoned. *Id.*

(See paragraphs 353 and 962–964, *ante.*)

RESERVE OFFICERS' TRAINING CORPS.

1553. *Senior and junior divisions of, to be organized at certain universities and colleges.*—The President is hereby authorized to establish and maintain in civil educational institutions a Reserve Officers' Training Corps, which shall consist of a senior division organized at universities and colleges requiring four years of collegiate study for a degree, including State universities and those State institutions that are required to provide instruction in military tactics under the provisions of the Act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of collegees where the leading object shall be practical instruction in agriculture and the mechanic arts, including military tactics, and a junior division organized at all other public or private educational institutions, except that units of the senior division may be organized at those essentially military schools which do not confer an academic degree but which, as a result of the annual inspection of such institutions by the War Department, are specially designated by the Secretary of War as qualified for units of the senior division, and each division shall consist of units of the several arms or corps in such number and of such strength as the President may prescribe. *Sec. 40, id.*

1554. *Same—One or more units may be established on application of any qualified State institution.*—The President may, upon the application of any State institution described in section forty of this Act, establish and maintain at such institution one or more units of the Reserve Officers' Training Corps. *Sec. 41, id.*

1555. *Same—Not to be established until after officer of Army has been detailed at the institution as professor of military science and tactics.*—No such unit shall be established or maintained at any such institution until an officer of the Army shall have been detailed as professor of military science and tactics, nor until such institution shall maintain under military instruction at least one hundred physically fit male students. *Id.*

1556. *Establishment of units at qualified institutions, other than State institutions, maintaining a two years' course of military train-*

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ing.—The President may, upon the application of any established educational institution in the United States other than a State institution described in section forty of this Act, the authorities of which agree to establish and maintain a two years' elective or compulsory course of military training as a minimum for its physically fit male students, which course when entered upon by any student shall, as regards such student, be a prerequisite for graduation, establish and maintain at such institution one or more units of the Reserve Officers' Training Corps. *Sec. 42, id.*

1557. *Same—Not to be established until after officer of Army has been detailed at institution as professor of military science and tactics.*—No such unit shall be established or maintained at any such institution until an officer of the Army shall have been detailed as professor of military science and tactics, nor until such institution shall maintain under military instruction at least one hundred physically fit male students. *Id. 192.*

1558. *Secretary of War to prescribe courses of military training for the units.*—The Secretary of War is hereby authorized to prescribe standard courses of theoretical and practical military training for units of the Reserve Officers' Training Corps, and no unit of the senior division shall be organized or maintained at any educational institution the authorities of which fail or neglect to adopt into their curriculum the prescribed courses of military training for the senior division or to devote at least an average of three hours per week per academic year to such military training; and no unit of the junior division shall be organized or maintained at any educational institution the authorities of which fail or neglect to adopt into their curriculum the prescribed courses of military training for the junior division, or to devote at least an average of three hours per week per academic year to such military training. *Sec. 43, id.*

1559. *Eligibility for membership in, as to age, citizenship, etc.*—Eligibility to membership in the Reserve Officers' Training Corps shall be limited to students of institutions in which units of such corps may be established who are citizens of the United States, who are not less than fourteen years of age, and whose bodily condition indicates that they are physically fit to perform military duty, or will be so upon arrival at military age. *Sec. 44, id.*

1560. *Detail of active or retired officers as professors for rank, pay, term, conditions, etc.*—The President is hereby authorized to detail such numbers of officers of the Army, either active or retired, not above the grade of colonel, as may be necessary, for duty as professors and assistant professors of military science and tactics at institutions where one or more units of the Reserve Officers' Training Corps are maintained; but the total number of active officers so detailed at educational institutions shall not exceed three hundred, and

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no active officer shall be so detailed who has not had five years' commissioned service in the Army. In time of peace retired officers shall not be detailed under the provisions of this section without their consent. Retired officers below the grade of lieutenant colonel so detailed shall receive the full pay and allowances of their grade, and retired officers above the grade of major so detailed shall receive the same pay and allowances as a retired major would receive under a like detail. No detail of officers on the active list of the Regular Army under the provisions of this section shall extend for more than four years. *Sec. 45, id.*

(See paragraphs 942–950, *ante.*)

1561. *Same—Detail of enlisted men, active, retired, or Regular Army Reserve, limit as to active who are to be additional, etc.*—The President is hereby authorized to detail for duty at institutions where one or more units of the Reserve Officers' Training Corps are maintained such number of enlisted men, either active or retired or of the Regular Army Reserve, as he may deem necessary, but the number of active noncommissioned officers so detailed shall not exceed five hundred, and all active noncommissioned officers so detailed shall be additional in their respective grades to those otherwise authorized for the Army. Retired enlisted men or members of the Regular Army Reserve shall not be detailed under the provisions of this section without their consent. While so detailed they shall receive active pay and allowances. *Sec. 46, id.*

(See paragraph 946, *ante.*)

1562. *Issue of public animals, arms, uniforms, equipment, etc., to institutions with established units.*—The Secretary of War, under such regulations as he may prescribe, is hereby authorized to issue to institutions at which one or more units of the Reserve Officers' Training Corps are maintained such public animals, arms, uniforms, equipment, and means of transportations as he may deem necessary, and to forage at the expense of the United States public animals so issued. He shall require from each institution to which property of the United States is issued a bond in the value of the property issued for the care and safe-keeping thereof, and for its return when required. *Sec. 47, id.*

(See paragraphs 951–955 and 954a–954b, *ante.*)

1563. *Issue of military equipment and detail of instructors at other schools and colleges.*—Such arms, tentage, and equipment as the Secretary of War shall deem necessary for proper military training shall be supplied by the Government to schools and colleges, other than those provided for in section forty-seven of this Act, having a course of military training prescribed by the Secretary of War and having not less than one hundred physically fit male students above

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the age of fourteen years, under such rules and regulations as he may prescribe; and the Secretary of War is hereby authorized to detail such commissioned and noncommissioned officers of the Army to said schools and colleges, other than those provided for in section forty-five and forty-six of this Act, detailing not less than one such officer or noncommissioned officer to each five hundred students under military instruction. *Sec. 56, id. 197.*

1564. *Camps for additional training of members of; period of encampment, equipment, etc.*—The Secretary of War is hereby authorized to maintain camps for the further practical instruction of the members of the Reserve Officers' Training Corps, no such camps to be maintained for a period longer than six weeks in any one year, except in time of actual or threatened hostilities; to transport members of such corps to and from such camps at the expense of the United States so far as appropriations will permit; to subsist them at the expense of the United States while traveling to and from such camps and while remaining therein so far as appropriations will permit; to use the Regular Army, such other military forces as Congress from time to time authorizes, and such Government property as he may deem necessary for the military training of the members of such corps while in attendance at such camps; to prescribe regulations for the government of such corps; and to authorize in his discretion, the formation of company units thereof into battalion and regimental units. *Sec. 48, id. 193.*

1565. *President alone may appoint qualified graduates of, in Officers' Reserve Corps; conditions.*—The President alone, under such regulations as he may prescribe, is hereby authorized to appoint in the Officers' Reserve Corps any graduate of the senior division of the Reserve Officers' Training Corps who shall have satisfactorily completed the further training provided for in section fifty of this Act, or any graduate of the junior division who shall have satisfactorily completed the courses of military training prescribed for the senior division and the further training provided for in section fifty of this Act, and shall have participated in such practical instruction subsequent to graduation as the Secretary of War shall prescribe, who shall have arrived at the age of twenty-one years and who shall agree, under oath in writing, to serve the United States in the capacity of a reserve officer of the Army during a period of at least ten years from the date of his appointment as such reserve officer, unless sooner discharged by proper authority; but the total number of reserve officers so appointed shall not exceed fifty thousand. *Sec. 49, id.*

1566. *Same—Qualified graduates not eligible for appointment while undergoing postgraduate course.*—Any graduate qualified under the provisions of this section undergoing a postgraduate

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course at any institution shall not be eligible for appointment as a reserve officer while undergoing such postgraduate course, but his ultimate eligibility upon completion of such postgraduate course for such appointment shall not be affected because of his having undergone such postgraduate course. *Id.*

1567. *Members who have completed two years of training may be furnished with commutation of subsistence for remainder of course of training.*—When any member of the senior division of the Reserve Officers' Training Corps has completed two academic years of service in that division, and has been selected for further training by the president of the institution and by its professor of military science and tactics, and has agreed in writing to continue in the Reserve Officers' Training Corps for the remainder of his course in the institution, devoting five hours per week to the military training prescribed by the Secretary of War, and has agreed in writing to pursue the courses in camp training prescribed by the Secretary of War, he may be furnished, at the expense of the United States, with commutation of subsistence at such rate, not exceeding the cost of the garrison ration prescribed for the Army, as may be fixed by the Secretary of War, during the remainder of his service in the Reserve Officers' Training Corps. *Sec. 50, id.*

1568. *Same—Credit to be given for military training.*—In the interpretation and execution of section fifty of the Act of Congress approved June third, nineteen hundred and sixteen, credit shall be given as for service in the senior division of the Reserve Officers' Training Corps to any member of that division for any period or periods of time during which such member has received or shall have received at an educational institution under the direction of an officer of the Army, detailed as professor of military science and tactics, a course of military training substantially equivalent to that prescribed by regulations under this section for the corresponding period or periods of training of the senior division, Reserve Officers' Training Corps. *Joint Resolution No. — of Sept. 8, 1916 (39 Stat. 853).*

1569. *Appointment of prior graduates of institutions giving military training to Officers' Reserve Corps and as temporary additional second lieutenants; age limit, citizenship, etc.*—Any physically fit male citizen of the United States, between the ages of twenty-one and twenty-seven years, who shall have graduated prior to the date of this Act from any educational institution at which an officer of the Army was detailed as professor of military science and tactics, and who, while a student at such institution, completed courses of military training under the direction of such professor of military science and tactics substantially equivalent to those prescribed pur-

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suant to this Act for the senior division, shall, after satisfactorily completing such additional practical military training as the Secretary of War shall prescribe, be eligible for appointment to the Officers' Reserve Corps and as a temporary additional second lieutenant in accordance with the terms of this Act. *Sec. 51, Act of June 3, 1916 (39 Stat. 193).*

1570. *Appointment by President alone of reserve officers as temporary second lieutenants of Regular Army in time of peace for instruction.*—The President alone is hereby authorized to appoint and commission as a temporary second lieutenant of the Regular Army in time of peace for purposes of instruction, for a period not exceeding six months, with the allowances now provided by law for that grade, but with pay at the rate of $100 per month, any reserve officer appointed pursuant to sections forty-nine and fifty-one of this Act and to attach him to a unit of the Regular Army for duty and training during the period covered by his appointment as such temporary second lieutenant, and upon the expiration of such service with the Regular Army such officer shall revert to his status as a reserve officer. *Sec. 52, id. 194.*

(See paragraphs 1565 and 1569, *ante.*)

1571. *Reserve officers and temporary second lieutenants not entitled to retirement or retired pay; pensionable status.*—No reserve officer or temporary second lieutenant appointed pursuant to this Act shall be entitled to retirement or to retired pay and shall be eligible for pension only for disability incurred in line of duty in active service or while serving with the Regular Army pursuant to the provisions of this Act. *Sec. 53, id.*

1572. *In time of war reserve officers may be assigned to active duty in any grades not below second lieutenant, and are subject to rules and articles of war.*—In time of war the President may order reserve officers appointed under the provisions of this Act to active duty with any of the military forces of the United States in any grades not below that of second lieutenant, and while on such active duty they shall be subject to the Rules and Articles of War. *Id.*

1573. *Adjutant General to keep revised list of civilians who have had military training qualifying them for appointment as commissioned officers.*—The Adjutant General of the Army shall, under the direction and supervision of the Secretary of War, obtain, compile, and keep continually up to date all obtainable information as to the names, ages, addresses, occupations, and qualifications for appointment as commissioned officers of the Army, in time of war or other emergency, of men of suitable ages who, by reason of having received military training in civilian educational institutions or elsewhere, may be regarded as qualified and available for appointment as such commissioned officers. *Id.*

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1574. *Camps of instruction for training civilians, equipment, etc., of.*—The Secretary of War is hereby authorized to maintain, upon military reservations or elsewhere, camps for the military instruction and training of such citizens as may be selected for such instruction and training, upon their application and under such terms of enlistment and regulations as may be prescribed by the Secretary of War; to use, for the purpose of maintaining said camps and imparting military instruction and training thereat, such arms, ammunition, accouterments, equipments, tentage, field equipage, and transportation belonging to the United States as he may deem necessary; to furnish, at the expense of the United States, uniforms, subsistence, transportation by the most usual and direct route within such limits as to territory as the Secretary of War may prescribe, and medical supplies to persons receiving instruction at said camps during the period of their attendance thereat, to authorize such expenditures, from proper Army appropriations, as he may deem necessary for water, fuel, light, temporary structures, not including quarters for officers nor barracks for men, screening, and damages resulting from field exercises, and other expenses incidental to the maintenance of said camps, and the theoretical winter instruction in connection therewith; and to sell to persons receiving instruction at said camps, for cash and at cost price plus ten per centum, quartermaster and ordnance property, the amount of such property sold to any one person to be limited to that which is required for his proper equipment. All moneys arising from such sales shall remain available throughout the fiscal year following that in which the sales are made, for the purpose of that appropriation from which the property sold was authorized to be supplied at the time of the sale.[1] *Sec. 54, id.*

1575. *Same—Secretary of War to prescribe course of instructions at, and detail Regular officers and enlisted men for duty in connection with.*—The Secretary of War is authorized further to prescribe the courses of theoretical and practical instruction to be pursued by persons attending the camps authorized by this section; to fix the periods during which such camps shall be maintained; to prescribe rules and regulations for the government thereof; and to employ thereat officers and enlisted men of the Regular Army in such numbers and upon such duties as he may designate. *Id.*

[1] *Held*, that in view of the broad powers of discretion conferred upon the Secretary of War by sec. 54, national defense Act, in the matter of providing for military camps of instruction and training for civilians, including authority "to furnish at the expense of the United States uniforms, subsistence, transportation, *and medical supplies* to persons receiving instruction at such camps," the first-aid packets requested could properly be furnished if regarded by the Surgeon General as reasonably necessary for the civilians in training at the camp. (War Dept. Bull. 18, July 8, 1916.)

Held, that such sales are authorized only to persons while they are in actual attendance at the camps "receiving instruction" thereat, and that there is no authority to fill orders for such property received from former attendants. (War Dept. Bull. 47, Nov. 16, 1916.)

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1576. *Appropriation for maintenance of camps on military reservations, etc., for training civilians.*—To provide for the expense of maintaining, upon military reservations or elsewhere, camps for the military instruction and training of such citizens as may be selected for such instruction and training, under such regulations as may be prescribed by the Secretary of War, and to furnish to said citizens the subsistence, transportation, and uniforms authorized by the Act of Congress approved June third, nineteen hundred and sixteen, $2,000,000. *Act of Aug. 29, 1916 (39 Stat. 648).*

1577. *Same—Available for transportation and subsistence of citizens between certain ages who have attended camps during 1916.*—So much of this appropriation as may be necessary shall be available for the subsistence and transportation of all persons between the ages of eighteen and forty-five years who have attended any camp authorized by the Secretary of War during the calendar year nineteen hundred and sixteen. *Id.*

1578. *Training camp for civilians on military reservation at Fort Douglas, Utah, maintenance of.*—The Secretary of War be, and he is hereby, authorized to maintain upon the military reservation of Fort Douglas, Utah, for such period within the fiscal year ending June thirtieth, nineteen hundred and seventeen, as he may deem advisable, a camp for the military instruction and training of such citizens as may be selected for such instruction and training under such regulations as he may prescribe, and to furnish to said citizens the subsistence, transportation, and uniforms authorized by the Act of Congress approved June third, nineteen hundred and sixteen; and for the purposes of this Act there is hereby appropriated the sum of $30,000, to be paid out of any money in the Treasury not otherwise appropriated. *Id. 671.*

1579. *Establishment and equipment of indoor and outdoor rifle ranges for training civilians.*—To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for Promotion of Rifle Practice and approved by the Secretary of War; to provide standard military arms and ammunition, indoor gallery rifles and ammunition; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors; for clerical services; for prizes, trophies, badges, and other insignia; for the transportation of employees, instructors, and civilians to engage in practice; for the purchase of materials, supplies, and services, and for expenses incidental to instruction of citizens of the United States in marksmanship, to be expended under the direction of the Secretary of War and to remain available until expended. *Id. 648.*

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1580. *Same—Officer of Army or Marine Corps may be appointed Director of Civilian Marksmanship.*—The President be, and he is hereby, authorized, in his discretion to appoint, as Director of Civilian Marksmanship, under the direction of the Secretary of War, an officer of the Army or of the Marine Corps. *Id.*

ENLISTED RESERVE CORPS.

1581. *Enlisted reserve for staff departments.*—For the purpose of securing an additional reserve of enlisted men for military service with the Engineer, Signal, and Quartermaster Corps and the Ordnance and Medical Departments of the Regular Army, an Enlisted Reserve Corps, to consist of such number of enlisted men of such grade or grades as may be designated by the President from time to time, is hereby authorized, such authorization to be effective on and after the first day of July, nineteen hundred and sixteen. *Sec. 55, Act of June 3, 1916 (39 Stat. 195).*

1582. *Issuance of certificates of enlistment to persons found qualified, rights conferred by.*—There may be enlisted in the grade or grades hereinbefore specified, for a period of four years, under such rules as may be prescribed by the President, citizens of the United States, or persons who have declared their intentions to become citizens of the United States, subject to such physical, educational, and practical examination as may be prescribed in said rules. For men enlisting in said grade or grades certificates of enlistment in the Enlisted Reserve Corps shall be issued by The Adjutant General of the Army, but no such man shall be enlisted in said corps unless he shall be found physically, mentally, and morally qualified to hold such certificate and unless he shall be between the ages of eighteen and forty-five years. The certificates so given shall confer upon the holders when called into active service or for purposes of instruction and training, during the period of such active service, instruction, or training, all the authority, rights, and privileges of like grades of the Regular Army. Enlisted men of the Enlisted Reserve Corps shall take precedence in said corps according to the dates of their certificates of enlistment therein and when called into active service or when called out for purposes of instruction or training shall take precedence next below all other enlisted men of like grades in the Regular Army. *Id.*

1583. *Rosettes or knots to be issued to members attending at least one encampment for military instruction of citizens.*—And the Secretary of War is hereby authorized to issue to members of the Enlisted Reserve Corps and to persons who have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, distinctive

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rosettes or knots designed for wear with civilian clothing, and whenever a rosette or knot issued under the provisions of this section shall have been lost, destroyed, or rendered unfit for use without fault or neglect upon the part of the person to whom it is issued, the Secretary of War shall cause a new rosette or knot to be issued to such person without charge therefor. *Id.*

1584. *Same—Penalty for unauthorized wearing of.*—Any person who is not an enlisted man of the Enlisted Reserve Corps and shall not have participated in at least one encampment for the military instruction of citizens, conducted under the auspices of the War Department, and who shall wear such rosette or knot shall be guilty of misdemeanor punishable by a fine of not exceeding $300, or imprisonment not exceeding six months, or both. *Id.*

1585. *Assignment of members to organizations of Regular Army or organization of into units or detachments of any arm, etc.*—The President is authorized to assign members of the Enlisted Reserve Corps as reserves to particular organizations of the Regular Army, or to organize the Enlisted Reserve Corps, or any part thereof, into units or detachments of any arm, corps, or department in such manner as he may prescribe, and to assign to such units and detachments officers of the Regular Army or of the Officers' Reserve Corps, herein provided for. *Id.*

1586. *May be ordered to active service annually for purpose of instruction or training.*—To the extent provided from time to time by appropriations the Secretary of War may order enlisted men of the Enlisted Reserve Corps to active service for purposes of instruction or training for periods not to exceed fifteen days in any one calendar year. *Id.*

1587. *Same—Periods of active service may be extended with consent of enlisted men.*—With the consent of such enlisted men and within the limits of funds available for such purposes, such periods of active service may be extended for such number of enlisted men as may be deemed necessary. *Id., 196.*

1588. *Same—Pay and allowances while in active service.*—Enlisted men of the Enlisted Reserve Corps shall receive the pay and allowances of their respective grades, but only when ordered into active service, including the time required for actual travel from their homes to the places to which ordered and return to their homes. *Id.*

1589. *Not entitled to retirement or retirement pay; pensionable status.*—Said enlisted men shall not be entitled to retirement or retirement pay, nor shall they be entitled to pensions except for physical disability incurred in line of duty while in active service or while traveling under orders of competent authority to or from designated places of duty. *Id.*

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1590. *Uniform to be same as for enlisted men of Regular Army and to be issued in kind.*—The uniform to be worn by enlisted men of the Enlisted Reserve Corps, except corps insignia, shall be the same as prescribed for enlisted men of the Regular Army Reserve, and that in lieu of any money allowance for clothing there shall be issued to each enlisted man of the Enlisted Reserve Corps in time of peace such articles of clothing and equipment as the President may direct. *Id.*

1591. *Same—Clothing or other equipment to remain property of United States.*—Any clothing or other equipment issued to any enlisted man of the said corps shall remain the property of the United States, and in case of loss or destruction of any article, the article so lost or destroyed shall be replaced by issue to the enlisted man and the value thereof deducted from any pay due or to become due him, unless it shall be made to appear that such loss or destruction was not due to neglect or other fault on his part. *Id.*

1592. *Same—Unserviceable to be replaced.*—Any clothing or other equipment issued to enlisted men of the Enlisted Reserve Corps which shall have become unserviceable through ordinary wear and tear in the service of the United States shall be received back by the United States and serviceable like articles issued in lieu thereof. *Id.*

1593. *Arms, clothing, and equipment issued to be accounted for on discharge.*—When enlisted men of the Enlisted Reserve Corps shall be discharged or otherwise separated from the service, all arms, equipage, clothing, and other property issued to them shall be accounted for under such regulations as may be prescribed by the Secretary of War. *Id.*

1594. *Enlisted men ordered to active service subject to rules and articles of war.*—Any enlisted man of the Enlisted Reserve Corps ordered to active service or for purposes of instruction or training shall, from the time he is required by the terms of the order to obey the same, be subject to the laws and regulations for the government of the Army of the United States. *Id.*

1595. *May be discharged when services no longer required or for misconduct.*—The Secretary of War is hereby authorized to discharge any enlisted member of the Enlisted Reserve Corps when his services shall be no longer required, or when he shall have by misconduct unfitted himself for further service in the said corps. *Id.*

1596. *Certificate of enlistment forfeited, in addition to other punishment, for failure to obey order assigning to active duty.*—Any enlisted man of said corps who shall be ordered upon active duty as herein provided and who shall willfully fail to comply with the terms of the order so given him shall, in addition to any other penalty to which he may be subject, forfeit his certificate of enlistment. *Id.*

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1597. *In time of actual or threatened hostilities may be ordered to active duty with Regular Army.*—In time of actual or threatened hostilities the President may order the Enlisted Reserve Corps, in such numbers and at such times as may be considered necessary, to active service with the Regular Army, and while on such service members of said corps shall exercise command appropriate to their several grades and rank in the organizations to which they shall be assigned and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of service as now allowed by law for the Regular Army. *Id.*

1598. *Same—May be mustered into the volunteer service with grades held in their corps.*—Upon a call by the President for a volunteer force the members of the Enlisted Reserve Corps may be mustered into the service of the United States as volunteers for duty with the Army in the grades held by them in the said corps, and shall be entitled to the pay and allowances of the corresponding grades in the Regular Army, with increase of pay for length of service, as now provided by law for the Regular Army. *Id.*

1599. *Same—Certificate of enlistment does not give vested right to be so mustered.*—Enlisted men of the Enlisted Reserve Corps shall not acquire by virtue of issuance of certificates of enlistment to them a vested right to be mustered into the volunteer service of the United States. *Id.*, 197.

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CHAPTER XLI.

PLANTS FOR MANUFACTURE OF ARMS, AMMUNITION, AND SUPPLIES—BOARDS AND COUNCIL OF NATIONAL DEFENSE, ETC.

	Par.
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PLANTS FOR MANUFACTURE OF ARMS, AMMUNITION AND SUPPLIES.

1600. *Purchase of products of in time of actual or threatened war.*—The President, in time of war or when war is imminent, is empowered, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation, or organized manufacturing industry. *Sec 120, Act of June 3, 1916 (39 Stat. 213.)*

1601. *Same—On refusal of plant to fill orders Government may take possession; penalty imposed on manufacturers for noncompliance.*—Compliance with all such orders for products or material shall be obligatory on any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof and shall take precedence over all other orders and contracts theretofore placed with such individual, firm, company, association, corporation, or organized manufacturing industry, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any plant equipped for the manufacture of arms or ammunition, or parts of ammunition, or any necessary supplies or equipment for the Army, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any manufacturing plant, which, in the opinion of the Secretary of War shall be capable of being readily transformed into a plant for the manufacture of arms or ammunition, or parts thereof, or other necessary supplies or equipment, who shall refuse to give to the United States such preference in the matter of the execution of orders, or who shall refuse to manufacture the kind, quantity, or quality of arms or ammunition, or the parts thereof, or any necessary supplies or equipment, as ordered by the Secretary of War, or who shall refuse to furnish such arms, ammunitions, or parts of ammuni-

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tion, or other supplies or equipment, at a reasonable price as determined by the Secretary of War, then, and in either such case, the President, through the head of any department of the Government, in addition to the present authorized methods of purchase or procurement herein provided for, is hereby authorized to take immediate possession of any such plant or plants, and through the Ordnance Department of the United States Army, to manufacture therein in time of war, or when war shall be imminent, such product or material as may be required, and any individual, firm, company, association, or corporation, or organized manufacturing industry, or the responsible head or heads thereof, failing to comply with the provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding $50,000. *Id.*

1602. *Same—Compensation or rental for use of plant to be fair and just.*—The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just. *Id.*

1603. *List of private arms and ammunition plants, showing capacity, etc.*—The Secretary of War shall also make, or cause to be made, a complete list of all privately owned plants in the United States equipped to manufacture arms or ammunition, or the component parts thereof. He shall obtain full and complete information regarding the kind of arms or ammunition, or the component parts thereof, manufactured or that can be manufactured by each such plant, the equipment in each plant, and the maximum capacity thereof. *Id., 214.*

1604. *Same—List of private manufacturing plants capable of being transformed into ammunition factories, with plans for such transformation.*—He shall also prepare, or cause to be prepared, a list of privately owned manufacturing plants in the United States capable of being readily transformed into ammunition factories, where the capacity of the plant is sufficient to warrant transforming such plant or plants into ammunition factories in time of war or when war shall be imminent; and as to all such plants the Secretary of War shall obtain full and complete information as to the equipment of each such plant, and he shall prepare comprehensive plans for transforming each such plant into an ammunition factory, or a factory in which to manufacture such parts of ammunition as in the opinion of the Secretary of War such plant is best adapted. *Id.*

1605. *Board on Mobilization of Industries Essential to Military Preparedness.*—The President is hereby authorized, in his discretion, to appoint a Board on Mobilization of Industries Essential for Mili-

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tary Preparedness, nonpartisan in character, and to take all necessary steps to provide for such clerical assistance as he may deem necessary to organize and coordinate the work hereinbefore described. *Id.*

1606. *Board to investigate Government manufacture of arms, munitions, and equipment*—The Secretary of War is hereby authorized to appoint a board of five citizens, two of whom shall be civilians and three of whom shall be officers of the Army, to investigate and report to him the feasibility, desirability, and practicability of the Government manufacturing arms, munitions, and equipment, showing in said report the comparative prices of the arms, munitions, and equipment manufactured in Government plants and those manufactured in private plants, the amount of money necessary to build and operate Government plants for the manufacture of arms, munitions, and equipment; showing also what the Government plants and arsenals are now doing in the way of manufacturing arms, munitions, and equipment, and what saving has accrued to the Government by reason of its having manufactured a large part of its own arms, munitions, and equipment for the last four years. And the Secretary of War is hereby directed to transmit said report to Congress on or before January first, nineteen hundred and seventeen. *Sec. 121, id.*

1607. *Procurement of gauges, dies, tools, drawings, etc., for manufacture of arms and ammunition.*—The Secretary of War be, and he is hereby, authorized to prepare or cause to be prepared, to purchase or otherwise procure, such gauges, dies, jigs, tools, fixtures, and other special aids and appliances, including specifications and detailed drawings, as may be necessary for the immediate manufacture, by the Government and by private manufacturers, of arms, ammunition, and special equipment necessary to arm and equip the land forces likely to be required by the United States in time of war. *Sec. 123, id. 215.*

1608. *Same—May be purchased without advertisement.*—In the expenditure of any sums appropriated to carry out the purposes of this section the existing laws prescribing competition in the procurement of supplies by purchase shall not govern, whenever in the opinion of the Secretary of War such action will be for the best interest of the public service. *Id.*

1609. *Same—Appropriation for purchase of for manufacture of ammunition.*—That $250,000 of this appropriation[1] may be used to procure gauges, dies, jigs, tools, fixtures, and other special aids and appliances, including specifications and detailed drawings necessary

[1] The appropriation referred to is $10,000,000 for the manufacture and purchase of ammunition for small arms.

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for the manufacture by the Government and by private manufacturers of ammunition necessary for the use of the land forces of the United States in time of war, and in the purchase of lots of ammunition to complete the object of this proviso the existing laws prescribing competition in the procurement of supplies by purchase shall not govern in orders not to exceed $50,000 in any one case. *Act of Aug. 29, 1916 (39 Stat. 642).*

1610. *Same—Appropriation for purchase of for manufacture of arms.*—That $200,000 of this appropriation[1] may be used to procure gauges, dies, jigs, tools, fixtures, and other special aids and appliances, including specifications and detailed drawings, necessary for the manufacture by private manufacturers, of arms necessary to arm the land forces likely to be required by the United States in time of war, and in the purchase of lots of arms to complete the object of this proviso the existing laws prescribing competition in the procurement of supplies by purchase shall not govern in orders not to exceed $50,000 in any one case. *Id. 643.*

1611. *Same—Appropriation for purchase of for manufacture of Field Artillery ammunition for National Guard.*—Not more than $200,000 of this appropriation[2] may be used to procure gauges, dies, jigs, tools, fixtures, and other special aids and appliances, including specifications and detailed drawings necessary for the manufacture by private manufacturers of Field Artillery ammunition necessary for the use of the land forces of the United States in time of war, and in the purchase of lots of ammunition to complete the object of this proviso the existing laws prescribing competition in the procurement of supplies by purchase shall not govern in orders not to exceed $50,000 in any one case. *Id. 644.*

1612. *Procurement of rights to inventions for control by radiodynamic energy of movement of torpedoes.*—For the procurement of the exclusive rights of John Hays Hammond, junior, and the Radio Engineering Company of New York (Incorporated) to their discoveries and inventions in the art of control by radiodynamic energy of the movement of water-borne carriers of high explosives, in accordance with a proposal heretofore made by said John Hays Hammond, junior, and said company, known as proposal Z, $750,000. *Act of July 6, 1916 (39 Stat. 347.)*

1613. *Same—Acquisition conditional on favorable report of board of Army and Navy officers.*—Said sum shall not be paid except upon the approval by the President of a report of a board of three Army and three Navy officers, to be appointed by him, which report shall

[1] The appropriation referred to is $5,000,000 for the manufacture of arms.
[2] The appropriation referred to is $10,000,000 for Field Artillery ammunition for the National Guard.

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be favorable to the acquisition of such rights, such report to be made after a demonstration of the application of the said system to the control of torpedoes; and, to provide for such demonstration, $30,000 of the sum so appropriated, or so much thereof as may be necessary for the purpose, may be applied to the expense of conducting the same exclusive of the services of said Hammond, which services shall be rendered free of charge, the amount so applied and which shall be immediately available, in the event of the purchase of such rights, to be considered as part payment of the purchase price of the same. *Id.*

1614. *Commissioner of Patents, in event of contract, to issue patents to United States covering the invention, etc.*—The Commissioner of Patents is authorized and directed, in the event of the entrance by the Government into a contract with the above-mentioned parties for the purchase of such rights in all instances where it would grant patents to John Hays Hammond, junior, or to the Radio Engineering Company upon request of the United States to issue said patents to the United States, and, in the event of said contract being made, the Commissioner of Patents is further authorized and directed to keep applications for such patents in the secret archives of the Patent Office, not open to disclosure even in cases of interferences. *Id.*

1615. *Same—Installation of one radiodynamic torpedo unit, provided rights are acquired.*—For procurement and installation of one radiodynamic torpedo unit, $417,000: *Provided*, That no part of said sum shall be so expended unless the United States shall first acquire as heretofore provided the rights of the said John Hays Hammond. junior, and the Radio Engineering Company of New York. *Id. 348.*

1616. *Same—Inventions important to the armament or defenses of the United States.*—Section forty-eight hundred and ninety-four of the Revised Statutes is amended so as to read as follows:

"All applications for patents shall be completed and prepared for examination within one year after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable: *Provided, however*, That no application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States: *Provided further*, That within ninety days, and not less than thirty days,

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before the expiration of any such three-year period the Commissioner of Patents shall, in writing, notify the head of the department interested in any pending application for patent, of the approaching expiration of the three-year period within which any application for patent shall have been pending." *Sec. 4894, R. S., as amended by Act of July 6, 1916 (39 Stat. 348).*

COUNCIL OF NATIONAL DEFENSE.

1617. *Composition and purpose of.*—A Council of National Defense is hereby established, for the coordination of industries and resources for the national security and welfare, to consist of the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor. *Sec. 2, Act of Aug. 29, 1916 (39 Stat. 649).*

1618. *Same—Appointment, composition, and duties of an advisory commission.*—The Council of National Defense shall nominate to the President, and the President shall appoint, an advisory commission, consisting of not more than seven persons, each of whom shall have special knowledge of some industry, public utility, or the development of some natural resource, or be otherwise specially qualified, in the opinion of the council, for the performance of the duties hereinafter provided. The members of the advisory commission shall serve without compensation, but shall be allowed actual expenses of travel and subsistence when attending meetings of the commission or engaged in investigations pertaining to its activities. The advisory commission shall hold such meetings as shall be called by the council or be provided by the rules and regulations adopted by the council for the conduct of its work. *Id.*

1619. *Same—Duties of council.*—It shall be the duty of the Council of National Defense to supervise and direct investigations and make recommendations to the President and the heads of executive departments as to the location of railroads with reference to the frontier of the United States so as to render possible expeditious concentration of troops and supplies to points of defense; the coordination of military, industrial, and commercial purposes in the location of extensive highways and branch lines of railroad; the utilization of waterways; the mobilization of military and naval resources for defense; the increase of domestic production of articles and materials essential to the support of armies and of the people during the interruption of foreign commerce; the development of seagoing transportation; data as to amounts, location, method and means of production, and availability of military supplies; the giving of information to producers and manufacturers as to the class of supplies needed by the military and other services of the Government, the requirements

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relating thereto, and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the Nation. *Id.*

1620. *Same—Rules and regulations for conduct of its work; organization of subordinate bodies.*—The Council of National Defense shall adopt rules and regulations for the conduct of its work, which rules and regulations shall be subject to the approval of the President, and shall provide for the work of the advisory commission to the end that the special knowledge of such commission may be developed by suitable investigation, research, and inquiry and made available in conference and report for the use of the council; and the council may organize subordinate bodies for its assistance in special investigations, either by the employment of experts or by the creation of committees of specially qualified persons to serve without compensation, but to direct the investigations of experts so employed. *Id. 650.*

1621. *Same—Appropriation for investigations of, annual and other reports by, etc.*—The sum of $200,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available for experimental work and investigations undertaken by the council, by the advisory commission, or subordinate bodies, for the employment of a director, expert and clerical expenses and supplies, and for the necessary expenses of members of the advisory commission or subordinate bodies going to and attending meetings of the commission or subordinate bodies. Reports shall be submitted by all subordinate bodies and by the advisory commission to the council, and from time to time the council shall report to the President or to the heads of executive departments upon special inquiries or subjects appropriate thereto, and an annual report to the Congress shall be submitted through the President, including as full a statement of the activities of the council and the agencies subordinate to it as is consistent with the public interest, including an itemized account of the expenditures made by the council or authorized by it, in as full detail as the public interest will permit: *Provided, however*, That when deemed proper the President may authorize, in amounts stipulated by him, unvouchered expenditures and report the gross sums so authorized not itemized. *Id.*

NITRATE SUPPLY.

1622. *For manufacture of munitions of war, etc.*—The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the

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production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also hereby authorized and empowered to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites, upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products. *Sec. 124, Act of June 3, 1916 (39 Stat. 215).*

1623. *Same—Acquisition of lands and materials for construction and operation of plants.*—The President is authorized to lease, purchase, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants, and to take from any lands of the United States, or to purchase or acquire by condemnation materials, minerals, and processes, patented or otherwise, necessary for the construction and operation of such plants and for the manufacture of such products. *Id.*

1624. *Same—Use and disposition of products of the plants.*—The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe *Id.*

1625. *Same—Employment of necessary officers or agents to carry out purposes of section.*—The President is hereby authorized and empowered to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof. *Id.*

1626. *Same—Appropriation for, to remain available until expended.*—The sum of $20,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to enable the President of the United States to carry out the purposes herein provided for. *Id.*

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1627. *Same—Plants to be operated solely by the Government.*—The plant or plants provided for under this Act shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital. *Id.*

1628. *Funds appropriated for, may be raised by sale of Panama Canal bonds.*—In order to raise the money appropriated by this Act and necessary to carry its provisions into effect, the Secretary of the Treasury, upon the request of the President of the United States, may issue and sell, or use for such purpose or construction hereinabove authorized, any of the bonds of the United States now available in the Treasury of the United States under the Act of August fifth, nineteen hundred and nine, the Act of February fourth, nineteen hundred and ten, and the Act of March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $20,000,000. *Id.*

1629. *Same—Maturity of bonds.*—Any Panama Canal bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion, may deem advisable, and fix, instead of fifty years after date of issue, as in said Act of August fifth, nineteen hundred and nine, not exceeding fifty years. *Id. 216.*

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Army officers, retired, duty as road commissioners. Act of Mar. 3, 1911 (36 Stat. 1052).

Board of Road Commissioners—

Army officers, retired, assigned to duty on. Act of Mar. 3, 1911 (36 Stat. 1052).

Composition, powers, duties, etc. Sec. 2, Act of May 14, 1906 (34 Stat. 192).

Bridges, roads, etc., maintained by "Alaska fund." Sec. 1, Act of May 14, 1906, (34 Stat. 192).

Bureau of Education, medical relief by employees of. Sec. 15, Act of Feb. 6. 1904 (35 Stat. 604).

Coal mines, United States option on output of certain. Sec. 2, Act of May 28, 1908 (35 Stat. 424).

Collection of license fees ("Alaska fund"). Sec. 1, Act of May 14, 1906 (34 Stat. 192).

Detail of Lieut. Frederick Mears in connection with the location and construction of Government railroads in. J. Res. No. 17, May 13, 1914 (38 Stat. 772).

Emergency cases, medical relief by employees of Bureau of Education not inhibited. Sec. 15, Act of Feb. 6, 1909 (35 Stat. 604).

Fees from liquor and trade licenses, collection and use of. Sec. 1, Act of May 14, 1906 (34 Stat. 192).

Insane persons, provision for care of. Sec. 1. Act of May 14, 1906 (34 Stat. 192); sec. 7. Act of Feb. 6, 1909 (35 Stat. 601).

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Alaska—Continued.
Licenses, liquor and trade, collection and use of fees. Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Liquor licenses, collection and use of fees from. Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Liquors, alcoholic, prohibition of manufacture and sale in, secs. 1–33, Act of Feb. 14, 1917 (39 Stat. —).
Medical relief by employees of Bureau of Education. Sec. 15, Act of Feb. 6, 1909 (35 Stat. 604).
Mines, coal, certain, United States option on output of. Sec. 2, Act of May 28, 1908 (35 Stat. 424).
Public schools, supported by "Alaska fund." Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Retired Army officers, duty as road commissioners. Act of Mar. 3, 1911 (36 Stat. 1052).
Roads, bridges, etc., maintained by "Alaska fund." Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Road Commissioners, Board of—
Army officers, retired, as members of. Act of Mar. 3, 1911 (36 Stat. 1052).
Composition, powers, duties, etc. Sec. 2, Act of May 14, 1906 (34 Stat. 192).
Schools, public, supported by "Alaska fund." Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Trade and liquor licenses, collection and use of fees from. Sec. 1, Act of May 14, 1906 (34 Stat. 192).
Aliens, declaration of intention to become citizens of United States. *See* Naturalization.
American citizens in Europe, relief, protection, and transportation of, made necessary by existing political disturbances, etc. *See* Europe.
American citizens in Mexico:
Relief and transportation of destitute. J. Res. No. 10, Sept. 16, 1913 (38 Stat. 238).
Relief and transportation of destitute. Act of July 14, 1916 (39 Stat. 359).
Relief and transportation of. Act of April 24, 1914 (38 Stat. 346).
Anchorage grounds:
Secretary of War authorized to establish and define in all harbors, rivers, bays, and other navigable waters. *See* Rivers and harbors.
Rules and regulations governing to be enforced by Chief of Engineers at ports or places where no revenue cutter is available, etc. *See* Rivers and harbors.
Animals, prevent cruelty in transit. Act June 29, 1906 (34 Stat. 607).
Annual report, Chief of Engineers. *See* Corps of Engineers.
Annual reports, time for heads of departments to submit to Public Printer. *See* printing and binding.
Antietam Battlefield. *See* National military parks.
Appropriations:
Consolidated items for river and harbor work, with aggregate amount therefor, allotments to respective works, and disposition of balances remaining to credit of separate work or items, etc. *See* Rivers and harbors.
Printing and binding, restrictions on expenditures from allotments for. *See* Printing and binding.

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Aqueduct Bridge, District of Columbia and Virginia. *See* Corps of Engineers.
Arbitration, court of or other tribunal. President authorized to invite all of the great Governments of the world to send representatives to a conference to be charged with the formulation of a plan for. Act of Aug. 29, 1916 (39 Stat. 618).
Appointment of nine citizens to be representatives of the United States in such a conference. Id.
Compensation of representatives, etc., to be fixed by President. Appropriation made and set aside for expenses of. Id.
Arbitration, declared policy of United States to settle its international disputes through mediation or. Act of Aug. 29, 1916 (39 Stat. 618).
Archives building, national, in District of Columbia. Designs and estimates to be prapared, space required, provision for subsequent extension, and inspection of similar buildings, etc., abroad. Sec. 21, Act of Mar. 4, 1913 (37 Stat. 884).
Inspection of archives buildings abroad required by paragraph 4, Sec. 21, of above Act repealed. Act of June 28, 1916 (39 Stat. 241).
Arlington memorial amphitheater and chapel:
Authorized. Sec. 14, Act Mar. 4, 1913 (37 Stat. 882).
Commission designated, duties, etc. Sec 16, Act May 30, 1908 (35 Stat. 540).
Name of John McElroy, representing the Grand Army of the Republic, substituted for that of Ivory G. Kimball, deceased. Sec. 5, Act of Sept. 8, 1916 (39 Stat. 830).
Arms:
Equipment and, distribution to States. *See* Militia.
Issue of Springfield rifles to States. *See* Militia.
Ordnance stores and, crediting for issues during Civil War. *See* Militia.
Sale of, to Indians prohibited. *See* Indians.
Army:
Enlistment in military service of foreign Governments, ministers of United States may issue writs to prevent American citizens from. *See* Neutrality.
President authorized to employ all persons in land and naval service in connection with Coast and Geodetic Survey work. Sec. 4685, R. S.
Women not allowed to accompany troops as laundresses. Sec. 5, Act of June 18, 1878 (20 Stat. 150).
Army nurses, pensionable status. *See* Pensions.
Army officers accountable for public property to obtain certificates of nonindebtedness, etc., before discharge. *See* Public property.
Army officers, detail of—
Accept position under Government of Greater Republic of Central America. J. Res. No. 23, Mar. 3, 1897 (29 Stat. 704).
Active or retired with Panama-California Exposition, San Diego, Cal. J. Res. No. 4, Jan. 15, 1915 (38 Stat. 1221).
Active or retired with the Panama-Pacific International Exposition. Act of Mar. 4, 1915 (38 Stat. 1065).
Alaskan railroads. Lieut. Frederick Mears to assist in location and construction of. J. Res. No. 17, May 13, 1914 (38 Stat. 772).
Coast and Geodetic Survey work, topographical parts of. Sec. 4684, R. S. Allowance of subsistence while so detailed. Sec. 4688, R. S.

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Army officers, detail of—Continued.
Engineer officers to assist Mississippi River Commission. Secs. 3 and 6, Act of June 28, 1879 (21 Stat. 38).
Engineer officers to assist Missouri River Commission. Act of July 5, 1884 (23 Stat. 144).
Engineer officers to superintend construction of lighthouses. Sec. 4664, R. S.
Governor of the West Indian Islands. Sec. 1, Act of Mar. 3, 1917 (Pub. No. 389, 39 Stat. —).
Grant leave of absence to officer of Corps of Engineers to assist Republic of China on reclamation work of the Huai River; termination of detail, pay during absence, etc. J. Res. No. 18, May 22, 1914 (38 Stat. 772).
Indian education. Sec. 7, Act of June 23, 1879 (21 Stat. 35).
Indian industrial and training school. Act of July 31, 1882 (22 Stat. 181).
Medical officer with Red Cross. Act of Mar. 3, 1911 (36 Stat. 1041).
Ordnance officers with Geological Survey. Act of June 16, 1880 (21 Stat. 274).
Panama-Pacific International Exposition, prohibitions against details to other service not applicable to, allowances for in lieu of transportation and mileage, etc. Act of June 23, 1913 (38 Stat. 76).
Army officers, Philippine Islands—
As attorneys and peace officers. *See* Philippine Islands.
Salary of, when detailed to duty under insular government. *See* Philippine Islands.
To be justices of the peace in connection with sale of intoxicating liquors. *See* Philippine Islands.
Army officers, retention of Maj. Gen. Arthur Murray on active list of the Army as an additional officer and in command of the Western Department from Apr. 29, 1915, until the close of the Panama-Pacific International Exposition, Dec. 4, 1915; and the number of major generals of the line of the Army on the active list is increased by one during the period named. Act of Mar. 4, 1915 (38 Stat. 1065).
Army, Philippine Islands, aid civil authorities. *See* Philippine Islands.
Army supplies, sale of to the militia, credit for proceeds of. *See* Militia.
Arrests of trespassers, etc., on Presidio of San Francisco, civil police may be called upon to make. Act of June 4, 1888 (25 Stat. 167).
Articles of War:
Fort Bayard Hospital subject to. *See* Medical Department.
Inmates of National Homes for Disabled Volunteer Soldiers subject to. *See* National Home for Disabled Volunteer Soldiers.
Artificial limbs, commutation to persons who can not use. *See* Medical Department.
Atlantic & Pacific Railroad, post route and military road. *See* Transportation.
Attorneys' fees, claims for pensions. *See* Pensions.
Attorneys, Philippine Islands, Army officers as peace officers and. *See* Philippine Islands.
Attorneys practicing before executive departments forbidden to use names of members of Congress or officers in advertising their business. Act of Apr. 27, 1916 (39 Stat. 54).
Auditor for War Department, account of Isthmian Canal Commission audited by. *See* Isthmian Canal Commission.
Baldwin Locomotive Works, and certain individuals, authorized to change and divert channel of Crum River, Pa. Act of July 27, 1916 (39 Stat. 393).
New channel to be a public navigable stream, etc. *Id.*

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Bedloes Island, New York Harbor, Secretary of War authorized to accept funds raised by New York World by popular subscription for construction of electric lighting plant for illumination of the Statue of Liberty on. Sec. 5, Act of July 27, 1916 (39 Stat. 411).

Board of Managers, National Home for Disabled Volunteer Soldiers, vacancies in membership of not to be filled until such board is reduced to five, etc. *See* National Home for Disabled Volunteer Soldiers.

Board of Road Commissioners, Alaska. *See* Alaska.

Bridges, dams, etc., over navigable waters. *See* Corps of Engineers.

Bridges, obstruction of navigable waters by, regulations for use of drawbridges, etc. *See* Corps of Engineers.

Building for Government exhibit on Presidio of San Francisco military reservation and use of building after exhibit. *See* Panama-Pacific International Exposition.

California Débris Commission. *See* Corps of Engineers.

California, temporary cession of jurisdiction to State of over portions of Presidio of San Francisco and Fort Mason Military Reservations during occupancy for exposition purposes. *See* Panama-Pacific International Exposition.

Canal Zone:

Automobiles, penalty for operating in violation of regulations for licensing and taxing. Sec. 5, Act of Aug. 21, 1916 (39 Stat. 528).

Breach of the peace, unlawful to committ a. Sec. 4, Act of Aug. 21, 1916 (39 Stat. 528).

Business or trade, penalty for conducting in violation of regulations relative to. Sec. 5, Act of Aug. 21, 1916 (39 Stat. 528).

Civil government of. *See also* Panama Canal.

Consolidation of Zone government, railroad, and canal funds. *See* Panama Canal.

Consular officers of United States in foreign ports, powers of in respect to seamen conferred on shipping commissioner, etc. Sec. 9, Act of Aug. 21, 1916 (39 Stat. 529).

Customs duties on imports from. *See* Panama Canal.

Customs officers, fees of for certificates, etc., or notarial service. Sec. 8, Act of Aug. 21, 1916 (39 Stat. 528).

Deposit money orders, interest on payable from bank interest on money order funds. Sec. 7, Act of Aug. 21, 1916 (39 Stat. 528).

Deposit money orders issued in lieu of postal savings certificates to bear interest. Sec. 6, Act of Aug. 21, 1916 (39 Stat. 528).

Disorderly, indecent, or immoral conduct, unlawful to engage in or permit. Sec. 4, id.

Fees of customs officers for certificates or notarial service. Sec. 8, id.

Health regulations to be prescribed by President. Sec. 1, Act of Aug. 21, 1916 (39 Stat. 527).

Immigration regulations as to persons entering or passing over. Sec. 10, id. 529.

Detention and return of persons entering in violation of regulations. Id.

Fine imposed on vessels for violation of regulations. Id.

Penalty for violation of regulations. Id.

Vessels required to return persons, withholding of clearance, etc. Id.

Immoral, indecent or disorderly conduct, unlawful to engage in or permit. Sec. 4, id. 528.

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Canal Zone—Continued.
Injury or obstruction to Panama Canal or locks. Sec. 10, id. 529.
Penalty for. Id.
Penalty for where act causes death of any person. Id.
Interest, deposit money orders issued in lieu of postal savings certificates to bear. Sec. 6, id. 528.
Interest on deposit money orders to be paid from bank interest on money order funds. Sec. 7, id.
Leases of land in. *See* Isthmian Canal Commission.
Leases of public lands in. *See* Panama Canal.
Naval radio stations on. *See* Panama Canal.
Notarial service, fees of customs officers for performing. Sec. 8, id.
Panama Canal or locks, injury to or obstruction of. Sec. 10, id. 529.
Penalty for. Id.
Penalty for where act causes death of any person. Id.
Police power, rules and regulations for asserting and exercising. Sec. 4, id. 528.
Police regulations, penalty for violating. Sec. 5, id.
Postal savings certificates, deposit money orders issued in lieu of to bear interest. Sec. 6, id. 528.
Postal service losses, payable from bank interest on money order funds. Sec. 7, id.
Quarantine regulations to be prescribed by President. Sec. 1, id. 527.
Penalty for violating. Id.
Revenues, distribution of. *See* Panama Canal.
Roads and highways, regulations for use of. Sec. 3, id. 528.
Automobile taxes may be graded according to value or power of machine. Id.
Licensing and taxing operation of self-propelled vehicles. Id.
Republic of Panama, mutual agreement with for reciprocal use of. Id.
Speed limit, signals, tags, license fees, etc., for self-propelled vehicles. Id.
Vehicles, self-propelled, regulations for operation of. Id.
Sanitary regulations to be prescribed by the President. Sec. 1, id. 527.
Penalty for violating. Id.
Seamen of vessels, powers of consular officers as to when on foreign voyages conferred on shipping commissioner, etc. Sec. 9, id. 529.
Shelter, temporary, of troops on. Use of portion of appropriation for acquisition of site and construction of supply depots at Fort Sam Houston, Tex., for providing. Act of Aug. 29, 1916 (39 Stat. 636).
No part of moneys so appropriated to be used for payment of commutation of fuel or quarters to officers or enlisted men. Id.
Shipping commissioner and deputy shipping commissioners, powers of United States consuls in foreign ports as to American seamen conferred on. Sec. 9, Act of Aug. 21, 1916 (39 Stat. 529).
Taxes, ad valorem, excise, license, and franchise. President to change regulations for levying, assessing, and collecting. Sec. 2, id. 528.
Ad valorem taxes, maximum rate of. Id.
Excise taxes, maximum rate of. Id.
Franchise taxes, maximum rate of. Id.
Taxes, penalty for conducting business, etc., in violation of regulations relative to. Sec. 5, id.
Vehicles, self-propelled, penalty for operation of in violation of regulations for licensing and taxing. Sec. 5, id.

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Cession of jurisdiction, temporary, to State of California over portions of Presidio of San Francisco and Fort Mason Military Reservations during occupancy for exposition purposes. *See* Panama-Pacific International Exposition.

Chickamauga and Chattanooga National Military Park. *See* National military parks.

Chief of Engineers:

Annual report of. *See* Corps of Engineers.

Draftsmen in office of. *See* Corps of Engineers.

Grant permission to the Women's Titanic Memorial Association to erect a memorial in the public grounds, District of Columbia, to the heroes of the Titanic. Sec. 7, Act of Mar. 3, 1917 (39 Stat. ——).

Grant permission for removal of statue to Admiral Dupont from Dupont Circle, Washington, D. C., etc. Act of Feb. 26, 1917, Pub. Res. No. 51 (39 Stat. ——).

Index to annual reports of, from 1866 to 1917, inclusive, printing of 1,500 copies authorized. Sec. 4, Act of July 27, 1916 (39 Stat. 411).

Rules and regulations governing enforcement of anchorage grounds in harbors, bays, etc., to be enforced by, at ports or places where no revenue cutter is available, etc. *See* Rivers and harbors.

Transportation of heavy freight on certain reaches of the Mississippi River at all stages of water with certain types of tows and barges, experiments by or by board appointed by Secretary of War. Act of July 27, 1916 (39 Stat. 403).

Chief of Ordnance:

American manufacture, all purchases of supplies for manufacture of arms, ammunition, etc., to be of, unless it is to the manifest interest of Government to purchase limited quantities abroad. Sec. 2, Act of July 6, 1916 (39 Stat. 350).

Appropriation for rental or repair of building for drafting force in office of. Sec. 4, id.

Arsenals, Government, to be operated at their most economical rate of production, except where a special exigency requires the operation of a portion of the arsenal's equipment at a different rate. Sec. 7, id. 351.

Draftsmen, employment of services of skilled and such other services as the Secretary of War may deem necessary, but the number of persons so employed, their duties, and compensation shall be reported to Congress each year with the estimates. Act of May 10, 1916 (39 Stat. 91).

Powder, price to be paid for, other than small-arms. Sec. 5, Act of July 6, 1916 (39 Stat. 350).

Purchase of materials from private manufactures, maximum price to be paid in excess of cost to Government to manufacture; limitation may be waived in case of emergency. Sec. 6, id.

Time study, etc., of any job of work not to be made by any officer, manager, superintendent, or foreman. Sec. 7, id. 351.

China, grant leave of absence to officer of Corps of Engineers to assist Republic of, in reclamation work. *See* Details of Army officers.

Citizenship:

Children of citizens born abroad. Sec. 1993, R. S., replaced by sec. 6, Act of Mar. 2, 1907 (34 Stat. 1229).

Defined. Sec. 1992, R. S.

Expatriation, right of. Sec. 1999, R. S., as amended by sec. 2, Act of Mar. 2, 1907 (34 Stat. 1228).

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Citizenship—Continued.
Married women. Sec. 1994, R. S., as amended by sec. 3, Act of Mar. 2, 1907 (34 Stat. 1228).
Naturalized citizens protected in foreign States. Sec. 2000, R. S.
Oregon, persons born in. Sec. 1995, R. S.
Penalty for false certificate as to. *See* Naturalization.
Pension claims. *See* Pensions.
Release of citizens imprisoned by foreign Governments. Sec. 2001, R. S., as amended by sec. 1, Act of Mar. 2, 1907 (34 Stat. 1228).
Widow and dependent children of declarant. *See* Naturalization.
Civil authorities, Philippine Islands:
Army to aid. *See* Philippine Islands.
Not to interfere with military administration of lands reserved for military purposes. *See* Philippine Islands.
Civil government, Canal Zone. *See* Panama Canal.
Civil government, Porto Rico. *See* Porto Rico.
Civil office, military employees not to hold or exercise duties of United States commissioner. Sec. 20, Act of May 28, 1896 (29 Stat. 184).
Civil service, pension withheld, payment of. *See* Pensions.
Civil service, Philippine Islands, scope and effect of Act, etc. *See* Philippine Islands.
Civil War:
Memorial monument to commemorate the women of the. Contributions by the Government for site and building; commission to approve site and plans and to supervise expenditures; Commission of Fine Arts also to approve plans; memorial to be permanent headquarters of the American Red Cross; and American Red Cross to be charged with and responsible for care, keeping, and maintenance of memorial and grounds, but title to site and building to be in United States. Act of Oct. 22, 1913 (38 Stat. 233).
Military telegraph operators, record and certificate of service to persons who served as. Act of Jan. 26, 1897 (29 Stat. 497).
Militia, crediting for arms and ordnance stores issued during. *See* Militia.
Coaling and naval stations in Cuba. *See* Cuba.
Coal mines, Alaska, United States option on output of certain. *See* Alaska.
Coast and Geodetic Survey:
Detail of Army officers for topographical parts of work. *See* Details of Army officers.
Allowance of subsistence while so detailed. *See* Details of Army officers.
President authorized to employ all persons in land and naval service in connection with work of. *See* Army.
Coastwise vessels:
Exemption from tolls of Panama Canal repealed. *See* Panama Canal.
Philippine Islands, licenses to harbor vessels and. *See* Philippine Islands.
Colombia, Republic of, right of way from. *See* Panama Canal.
Colored and Indian soldiers, widows of. *See* Pensions.
Commission of Fine Arts:
Appropriations for expenses of. Act June 25, 1910 (36 Stat. 728); Act Aug. 24, 1912 (37 Stat. 445).
Approve plans for the memorial monument to commemorate the women of the Civil War. Act of Oct. 22, 1913 (38 Stat. 233).
Established; members; appointment; duties; expenses. Act. May 17, 1910 (36 Stat. 371).

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Commission of Fine Arts—Continued.
George Washington memorial building plans to be approved by. Sec. 10, Act Mar. 4, 1913 (37 Stat. 881).
Commissioners of the District of Columbia, appointment of civil commissioners, etc. *See* Corps of Engineers.
Commissioners, United States, military employees not to hold or exercise duties of. *See* Civil office.
Common carriers:
Duties of, with respect to animals in transit. Act June 29, 1906 (34 Stat. 607).
Engaged in interstate and foreign commerce, establishment of an 8-hour day for employees of. Secs. 1–4, Act of Sept. 3–5, 1916 (39 Stat. 721).
Military stores—loss or damage; moneys credited to proper appropriations. Act Mar. 2, 1905 (33 Stat. 840).
Commutation, payment to persons who can not use artificial limbs. *See* Medical Department.
Conduit Road, Chief of Engineers authorized to regulate traffic, etc. *See* Washington Aqueduct under Corps of Engineers.
Confederate dead, marking graves of, in all national cemeteries and cemeteries at Federal military stations or locations throughout the country. *See* Marking graves of Confederate dead.
Confederate Veterans. *See* United Confederate Veterans.
Confederate Veterans' Association reunion, District of Columbia, 1917. Appropriation for, loans to, etc. Secs. 1–6, Feb. 26, 1917. Pub. Res. 50 (39 Stat. —).
Congress, use of names of Members of, by attorneys practicing before executive departments. Act of Apr. 27, 1916 (39 Stat. 54).
Contracts and purchases. *See* Corps of Engineers.
Corps of Engineers:
Alabama, certain rivers in, free from tolls. Sec. 5244, R. S.
Annual report, Chief of Engineers. Sec. 8, Act of Aug. 11, 1888 (25 Stat. 400).
Aqueduct Bridge, regulations for use of. Act of Mar. 3, 1875 (18 Stat. 393).
Aqueduct Bridge, Secretary of War authorized to replace existing structure with new bridge. Sec. 1, Act of May 18, 1916 (39 Stat. 163).
Cost of construction, how apportioned. Sec. 6, id. 164.
Engineers and others may be employed in construction of. Sec. 3, id. 163.
Highway for traffic, and use for gas and water mains, power, telephone, and telegraph wires, etc. Sec. 5, id. 164.
Land necessary for, to be acquired by condemnation proceedings. Sec. 2, id. 163.
Plans, appropriation for, and restrictions as to, etc. Sec. 4, id.
Repairs may be made to old bridge while new is under construction. Sec. 7, id. 164.
Washington & Old Dominion Railway, conditions and terms on which it is granted use of the bridge. Sec. 5, id.
Bridges, dams, etc., over navigable waters. Sec. 9, Act of Mar. 3, 1899 (30 Stat. 1150).
California Débris Commission—
Annual report. Sec. 7, Act of Mar. 1, 1893 (27 Stat. 508).
Appropriations by State, receipt and use of. Act of July 1, 1898 (30 Stat. 631).

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California Débris Commission—Continued.
Compensation of employees of. Sec. 4, Act of Mar. 3, 1899 (30 Stat. 1150).
Conditions as to commencing operations. Sec. 15, Act of Mar. 1, 1893 (27 Stat. 509).
Conditions, violation of, forfeiture. Sec. 19, Act of Mar. 1, 1893 (27 Stat. 510).
Creation of, appointments to. Sec. 1, Act of Mar. 1, 1893 (27 Stat. 507).
Débris fund—
Appropriations from, restraining works. Sec. 25, Act of Mar. 1, 1893 (27 Stat. 511).
Created, expenditures by commission. Sec. 23, Act of Mar. 1, 1893 (27 Stat. 510).
Débris washed away, limit of. Sec. 17, Act of Mar. 1, 1893 (27 Stat. 509).
Decisions of, within 30 days. Sec. 13, Act of Mar. 1, 1893 (27 Stat. 508).
Dumping ground—
Expenses for constructing, allotment of. Sec. 16, Act of Mar. 1, 1893 (27 Stat. 509).
Petition for, contents, etc. Secs. 10 and 11, Act of Mar. 1, 1893 (27 Stat. 508).
Duties, plans. Sec. 4, Act of Mar. 1, 1893 (27 Stat. 507).
Employees, compensation, appointment. Sec. 4, Act of Mar. 3, 1899 (30 Stat. 1150).
Floods in Sacramento River, jurisdiction over State funds for control of. Sec. 2, Act of Mar. 1, 1917 (39 Stat. —).
Funds appropriated by State, United States Treasurer to receive. Act of June 3, 1896 (29 Stat. 232).
Hydraulic mines—
Petition must be filed with commission. Sec. 23, Act of Mar. 1, 1893 (27 Stat. 510).
Tax on gross proceeds. Sec. 23, Act of Mar. 1, 1893 (27 Stat. 510).
Hydraulic mining—
Navigable waters, injuring, penalty. Sec. 22, Act of Mar. 1, 1893 (27 Stat. 510).
And "Mining by hydraulic process" defined. Sec. 8, Act of Mar. 1, 1893 (27 Stat. 508).
Injury to works, penalty. Sec. 22, Act of Mar. 1, 1893 (27 Stat. 510).
Jurisdiction. Sec. 3, Act of Mar. 1, 1893 (27 Stat. 507).
Labor, hired, work may be done by. Act of Mar. 3, 1899 (30 Stat. 1148).
Mines—
Plans of, supervision, etc. Sec. 14, Act of Mar. 1, 1893 (27 Stat. 509).
Petition, notice of, to be published. Sec. 12, Act of Mar. 1, 1893 (27 Stat. 508).
Visiting, inspection. Sec. 20, Act of Mar. 1, 1893 (27 Stat. 510).
Navigable channels, noting condition of. Sec. 6, Act of Mar. 1, 1893 (27 Stat. 508).
Orders, modifications, etc. Sec. 18, Act of Mar. 1, 1893 (27 Stat. 509).
Public lands and material, use of. Sec. 21, Act of Mar. 1, 1893 (27 Stat. 510).

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Corps of Engineers—Continued.
California Débris Commission—Continued.
Recommendations of, appropriations. Sec. 25, Act of Mar. 1, 1893 (27 Stat. 511).
Sacramento River, control of floods in. Pars. a–c, sec. 1, Act of Mar. 1, 1917 (39 Stat. —).
Sites, storage, for débris, etc., survey of. Sec. 5, Act of Mar. 1, 1893 (27 Stat. 507).
State commissioner of engineers, commission may consult with. Sec. 24, Act of Mar. 1, 1893 (27 Stat. 511).
Works, State to pay contractor one-half cost. Act of Mar. 3, 1899 (30 Stat. 1148).
Canals—
Operation of, tolls, etc. Sec. 4, Act of July 5, 1884 (23 Stat. 147).
Regulations for navigation of, to be posted. Sec. 4, Act of Aug. 17, 1894 (28 Stat. 362).
Cinore River, Mo., not navigable. Act of Mar. 23, 1900 (31 Stat. 50).
Civil engineers—
Employment of. Sec. 5253, R. S.
Names of employed to be reported to Congress. Sec. 8, Act of Aug. 5, 1886.
Number, duties, and compensation to be reported yearly to Congress with the annual estimates. Act of May 10, 1916 (39 Stat. 92).
Commissioners of the District of Columbia—
Appointment of civil commissioners. Sec. 2, act of June 11, 1878 (20 Stat. 103).
Engineer commissioner—
Assistants (three), authorized. Act. of Aug. 7, 1894 (26 Stat. 246).
Authorization of. Act of June 11, 1878 (20 Stat. 103).
Compensation. Act. of Mar. 3, 1881 (21 Stat. 460).
Qualifications, etc. Joint res. 7, Dec. 24, 1890 (26 Stat. 1113).
Estimates of. Act of June 11, 1878 (20 Stat. 104).
Powers, limitation. Act of June 10, 1879 (21 Stat. 9).
Salary. Sec. 2, act of June 11, 1878 (20 Stat. 103).
Wharf property, control of. Act of Mar. 3, 1899 (30 Stat. 1377).
Consolidated items of river and harbor work with aggregate amount appropriated therefor, allotments to respective works, and disposition of balances remaining to credit of separate works or items, etc. Sec. 3, act of Mar. 4, 1915 (38 Stat. 1052).
Contracts and purchases—
Application of appropriations. Sec. 3, act of Aug. 11, 1888 (25 Stat. 423).
Lands, condemnation and purchase of. Act of Apr. 24, 1888 (25 Stat. 94).
Des Moines River, free from tolls. Sec. 5246, R. S.
Donation of funds to be expended with public funds for improvement of rivers and harbors, Secretary of War authorized to receive from private parties. Sec. 4, act of Mar. 4, 1915 (38 Stat. 1053).
Draftsmen, etc., in office Chief of Engineers. Act of May 28, 1896 (29 Stat. 163).

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Corps of Engineers—Continued.
Draftsmen, skilled, civil engineers, and such other services as the Secretary of War may deem necessary may be employed only in the office of the Chief of Engineers, but the number so employed, their duties, and compensation shall be reported to Congress each year with the annual estimates. Act of May 10, 1916 (39 Stat. 92).
Dredging, restriction on. Sec. 5, act of July 13, 1892 (27 Stat. 111).
Establish anchorage grounds in all harbors, rivers, bays, and other navigable waters, Secretary of War authorized to define and. Sec. 7, act of Mar. 4, 1915 (38 Stat. 1053).
Rules and regulations governing, to be enforced by the Chief of Engineers at ports or places where no revenue cutter is available, etc. Sec. 7, act of Mar. 4, 1915 (38 Stat. 1053).
Executive Mansion—
Furniture for. Sec. 1829, R. S.
Inventory of property in. Act of Apr. 17, 1900 (31 Stat. 97).
Fishways, authority for construction of. Sec. 11, act of Aug. 11, 1888 (25 Stat. 425).
Fortifications, injuries to mines, torpedoes, etc. Act of July 7, 1898 (30 Stat. 717).
Funds contributed in excess of actual cost of work may be returned to representatives of contributing interests upon approval of Secretary of War, etc. Sec. 4, act of Mar. 4, 1915 (38 Stat. 1053).
Grant leave of absence to officer of, to assist Republic of China in reclamation work. *See* Details of Army officers.
Harbor lines—
Establishment of, by Secretary of War. Sec. 11, act of Mar. 3, 1899 (30 Stat. 1151).
Extensions, permits for. Sec. 11, act of Mar. 3, 1899 (30 Stat. 1151).
Harbor regulations for the District of Columbia—
Deposits on shores of Potomac River prohibited. Act of May 19, 1896 (26 Stat. 126).
Deposits in Potomac River, unlawful, forbidden. Sec. 2, act of May 19, 1896 (29 Stat. 126).
Establishment of harbor lines. Sec. 3, act of Mar. 3, 1899 (30 Stat. 1378).
Limitation of. Sec. 4, Act of May 19, 1896 (29 Stat. 126).
Violation of, penalty. Sec. 3, Act of May 19, 1896 (29 Stat. 126).
Index to annual reports of Chief of Engineers from 1866 to 1917, inclusive, printing of 1,500 copies authorized. Sec. 4, Act of July 27, 1916 (39 Stat. 411).
Injury to public works (*see* subhead Public works).
Iowa River, portion declared not navigable. Sec. 5248, R. S.
Isthmian Canal Commission—
Duties. Sec. 3, Act of Mar. 3, 1899 (30 Stat. 1150).
Funds for support of. Sec. 5, Act of Mar. 3, 1899 (30 Stat. 1150).
Investigations, report of. Sec. 6, Act of Mar. 3, 1899 (30 Stat. 1150).
Lighthouses—
Contracts for erection of. Acts of Aug. 31, 1852 (10 Stat. 120); Mar. 2, 1867 (14 Stat. 452).
Inspectors. Sec. 4671, R. S.
Superintendents of construction, etc. Sec. 4664, R. S.

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Corps of Engineers—Continued.
Lighthouse Board—
Compensation of officers on. Sec. 4679, R. S.
Members not to be interested in contracts. Sec. 4680, R. S.
Organization. Sec. 4653, R. S.
Louisiana, navigable rivers in, public highways. Sec. 5251, R. S.
Maquoketa River, construction of bridges across. Sec. 5250, R. S.
Missouri River Commission—
Creation; composition; duties. Act of July 5, 1884 (23 Stat. 144).
Expenditure of appropriations, supervision of. Act of July 5, 1884 (23 Stat. 144).
Mississippi River. (*See also* Mississippi River.)
Chief of Engineers or board appointed by Secretary of War to experiment with transportation of heavy freight on certain reaches of, with certain type of tows and barges at all stages of water. Act of July 27, 1916 (39 Stat. 403).
Control of floods in. Pars. a–d, sec. 1, Act of Mar. 1, 1917 (39 Stat. —).
Snagboats, operation of, on upper Mississippi. Sec. 7, Act of Aug. 11, 1888 (25 Stat. 424).
South Pass—
Location and extent of regulations for navigation of. Sec. 5, Act of Aug. 11, 1888 (25 Stat. 424); sec. 3, Act of Sept. 19, 1890 (26 Stat. 452).
Surveys, appropriations for, made permanent. Sec. 4, Act of Aug. 11, 1888 (25 Stat. 424).
Material for improvements, how obtained. Sec. 6, Act of July 5, 1884 (23 Stat. 148).
Piers and cribs. Sec. 5254, R. S., as amended by Act of May 1, 1882 (22 Stat. 52).
Water gauges on, and tributaries. Sec. 5252, R. S.
Mississippi River Commission—
Creation, composition. Act of June 28, 1879 (21 Stat. 37).
Duties, report. Secs. 3, 4, and 5, Act of Feb. 18, 1901 (31 Stat. 792).
Headquarters, location general office. Act of Feb. 18, 1901 (31 Stat. 792).
Mississippi River and certain of its tributaries placed under jurisdiction of. Act of July 27, 1916 (39 Stat. 402).
Ohio River improvement, as to locks and dams, etc., excepted from jurisdiction of. Id.
Salary of civilian members fixed at $5,000. Sec. 4, Act of Mar. 1, 1917 (39 Stat. —).
Secretary, detail of Engineer officer as. Act of Feb. 18, 1901 (31 Stat. 792).
Muskingum River, Ohio, relief of lessees on whose property was destroyed by Ohio Valley flood of March, 1913. Act of Aug. 1, 1914 (38 Stat. 637).
Navigable waters of the United States. (*See also* Navigable waters.)
Alabama, certain rivers in, free of tolls. Sec. 5244, R. S.
Cinore River, Mo., not navigable. Act of Mar. 23, 1900 (31 Stat. 50).
Crum River, Pa., Baldwin Locomotive Works, and certain individuals, authorized to change and divert channel of, etc. Act of July 27, 1916 (39 Stat. 393).
New channel to be public navigable stream, etc. Id.

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Corps of Engineers—Continued.
Navigable waters of the United States—Continued.
Deposits in. Sec. 13, Act of Mar. 3, 1899 (30 Stat. 1152).
Des Moines River, free from tolls. Sec. 5246, R. S.
Drawbridges, regulations for use of. Sec. 5, Act of Aug. 17, 1894 (28 Stat. 362).
Government pier in Delaware Bay near Lewes, Delaware, to be open to public under regulations to be prescribed by Secretary of War. Act of July 27, 1916 (39 Stat. 394).
Repeal of provision authorizing transfer of, to Treasury Department. Id.
Iowa River, not navigable. Sec. 5248, R. S.
"Kyle and Young Canal" and the "Morrison Landing extension" of the same, on the Oklawaha River, Fla., acceptance by Secretary of War of title to land and navigation improvement of. Act of July 27, 1916 (39 Stat. 396).
Canal and extension to become public waterway of United States. Id.
Louisiana, navigable rivers in; public highways. Sec. 5251, R. S.
Maquoketa River, construction of bridges across. Sec. 5250, R. S.
Obstruction of, by bridges, etc. Sec. 18, Act of Mar. 3, 1899 (30 Stat. 1153).
Public works, unauthorized use of. Sec. 14, Act of Mar. 3, 1899 (30 Stat. 1152).
Within public lands to be public highways. Sec. 2476, R. S.
Navigation, obstructions to—
Drawbridges, regulations for operation of. Sec. 5, Act of Aug. 17, 1894 (28 Stat. 362).
Floating logs, rafts, etc., regulations for. Sec. 2, Act of May 9, 1900 (31 Stat. 172).
Penal clauses—
Anchoring vessels, etc. Sec. 15, Act of Mar. 3, 1899 (30 Stat. 1152).
Dumping refuse, etc. Sec. 16, Act of Mar. 3, 1899 (30 Stat. 1152).
Enforcement of, Department of Justice to conduct proceedings. Sec. 17, Act of Mar. 3, 1899 (30 Stat. 1153).
Miscellaneous obstructions. Sec. 12, Act of Mar. 3, 1899 (30 Stat. 1151).
Prohibited. Sec. 10, Act of Mar. 3, 1899 (30 Stat. 1151).
Sunken vessels. Sec. 19, Act of Mar. 3, 1899 (30 Stat. 1154).
Wrecks, removal of, appropriation. Sec. 20, Act of Mar. 3, 1899 (30 Stat. 1154).
New York Harbor —
Boats to carry name, etc., painted. Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).
Bribing inspector or other officer, penalty. Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).
Dredged matter, disposal of. Sec. 4, Act of June 29, 1888 (25 Stat. 210).
Dumping—
At unauthorized places, penalty. Sec. 3, Act of June 29, 1888 (25 Stat. 209) as amended by Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).

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Corps of Engineers—Continued.
New York Harbor—Continued.
Dumping—Continued.
Deposits, injurious, forbidden; penalty. Sec. 3, Act. of Aug. 5, 1886 (24 Stat. 329); Sec. 1, Act of June 29, 1888 (25 Stat. 209).
Permits for, return of, penalty. Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).
Supervisor to designate place of, permits. Sec 3, Act of June 29, 1888 (25 Stat. 209); as amended by Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).
Fishing in ship channels forbidden, penalty. Sec. 2, Act of Aug. 17, 1894 (28 Stat. 360).
Inspectors, duties, arrests, procedure, etc. Sec. 3, Act of Aug. 18, 1894 (28 Stat. 360).
Supervisor, appointment, duties. Sec. 5, Act of June 29, 1888 (25 Stat. 210).
Violation of act relating to—
Punishment of officer of boat. Sec. 2, Act of June 29, 1888 (25 Stat. 209).
Proceedings, arrests, process. Sec. 2, Act of Aug. 17, 1894 (28 Stat. 360).
Obstructions to navigation. *See* Navigation, obstructions to (under Corps of Engineers).
Potomac Park—
Acquisition of lands required for connecting parkway between Potomac Park, Zoological Park, and Rock Creek Park; limitation as to total area to be acquired; to form part of park system of District of Columbia, etc. Act of July 1, 1916 (39 Stat. 282).
Ailanthus trees, purchase of. Sec. 1830, R. S.
Bank of the Potomac, control of. Act of Mar. 3, 1899 (30 Stat. 1106).
Canal spaces added to park system, etc. Act of Aug. 1, 1914 (38 Stat. 633).
Made part of park system. Act of Aug. 1, 1914 (38 Stat. 634).
Permits by Secretary of War to occupy reservations, etc., in connection with forty-ninth encampment of the G. A. R. *See* Grand Army of the Republic.
Playground for children. Act of Aug. 30, 1890 (26 Stat. 371).
Regulations for control of. Sec. 2, Act of Mar. 3, 1899 (30 Stat. 1106).
Restrictions on lagoons or speedways in. Act of Aug. 1, 1914 (38 Stat. 634).
Trees, plants, etc., to be propagated. Act of June 20, 1878 (20 Stat. 220).
Watchmen to have police power. Act of Aug. 5, 1882 (22 Stat. 257).
Public buildings and grounds:
Chief of Engineers to have charge of. Sec. 1797, R. S.
Employees. Sec. 1799, R. S.; Act of Jan. 20, 1874 (18 Stat. 4).
Estimates and appropriations for. Sec. 1798, R. S.
Reports of Superintendent of. Sec. 1812, R. S.
Public works, unauthorized use of. Sec. 14, Act of Mar. 3, 1899 (30 Stat. 1152).
Public works, injury to, amendment of act, civil actions not affected. Secs. 3 and 4, Act of May 9, 1900 (31 Stat. 172).
Report, annual, Chief of Engineers. Sec. 8, Act of Aug. 11, 1888 (25 Stat. 400).

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Corps of Engineers—Continued.
River and harbor works:
Preliminary surveys, estimates, reports. Act of Aug. 2, 1882 (22 Stat. 213).
Reports of deterioration. Sec. 7, Act of Mar. 3, 1899 (30 Stat. 1150).
Statistics, commercial, to be supplied superintendents. Act of Feb. 21, 1891 (26 Stat. 766).
Secretary of War authorized to appoint a board of three officers from, to examine and appraise the value of the work and franchises of the East Coast Canal from the St. Johns River to Key West, Fla., with reference to purchasing the canal and the construction by the Government of a free and open waterway, etc. Sec. 15, Act of Mar. 4, 1915 (38 Stat. 1058).
South Pass, Mississippi River; regulations for navigation of. Sec. 5, Act of Aug. 11, 1888 (25 Stat. 424); sec. 3, Act of Sept. 19, 1890 (26 Stat. 452).
Supply depot for, acquisition of land at Fort Sam Houston, Texas, and construction of. Act of Aug. 29, 1916 (39 Stat. 636).
Surveys, restriction on, etc. Sec. 2, Act of Mar. 3, 1899 (30 Stat. 1149).
Washington Aqueduct:
Appropriations for, how expended. Sec. 1802, R. S.
Chief of Engineers—
Decisions of; right of appeal to Secretary of War. Sec. 1811, R. S.
to Enforce traffic regulations for the protection of, including the Filtration Plant and its accessories, and the Conduit Road. Act of Sept. 1, 1916 (39 Stat. 693).
Conduit Road, speed limit over, within District of Columbia, and within Maryland. Id.
Prosecution in the police courts of the District for violation of the regulation within the District of Columbia. Id.
Prosecutions before United States Commissioner for violation of the regulations within State of Maryland. Id.
to Have charge of. Sec. 1800, R. S.
to Receive no extra compensation. Sec. 1807, R. S.
to Regulate water supply. Sec. 1810, R. S.
Reports of, as superintendent of Washington Aqueduct. Sec. 1812, R. S.
to be Supplied, stationery, etc. Sec. 1808, R. S.
Miscellaneous provisions:
Diversion of water prohibited. Act of Mar. 3, 1893 (27 Stat. 544).
Maliciously making water impure. Sec. 1806, R. S.
Pipes for use of public buildings. Sec. 1805, R. S.
Superintendence and control of, including its rights, appurtenances, and fixtures, to remain under the Secretary of War. Act of Sept. 1, 1916 (39 Stat. 713).
Unauthorized opening of pipes; penalty. Sec. 1803, R. S.
Use of water in public buildings. Act of Mar. 3, 1883 (22 Stat. 615).
Willful breaking of pipes; penalty. Sec. 1804, R. S.
Record of property to be kept. Sec. 1809, R. S.
Regulations may be prescribed by President. Sec. 1801, R. S.
Superintendent:
Lands about reservoir under control of. Act of Mar. 3, 1875 (18 Stat. 393).
Reports of. Sec. 1812, R. S.

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Corps of Engineers—Continued.
Washington Monument:
Advertisement or sale of articles in or around prohibited except on written authority of Secretary of War. Acts of Feb. 9 and Mar. 4, 1909 (35 Stat. 615 and 997).
Care and maintenance. Act of Oct. 2, 1888 (25 Stat. 533).
Employees; extra pay prohibited. Sec. 1835, R. S.
Joint commission dissolved. Act of Oct. 2, 1888 (25 Stat. 533).
Washington National Monument Society continued. Act of Oct. 2, 1888 (25 Stat. 533).
Costa Rica, concessions from. *See* Panama Canal.
Courts-martial:
Accused may testify before. *See* Military tribunals.
Closed sessions at trials before. *See* Military tribunals.
Reporters, employment of. *See* Military tribunals.
Punishment of spies. *See* Military tribunals.
Witnesses, attendance of, refusal to testify. *See* Military tribunals.
Crum River, Pa., Baldwin Locomotive Works, and certain individuals, authorized to change and divert channel of, etc. Act of July 27, 1916 (39 Stat. 393).
New channel to be a public navigable stream, etc. Id.
Cuba:
Commercial treaty with, not affected by customs act. Sec. 8, Act of Aug. 5, 1909 (36 Stat. 83).
Concessions not to be granted by United States, during occupation. Act of Mar. 3, 1899 (30 Stat. 1074).
Cuban vessels in United States ports, rights of. Act of Feb. 10, 1900 (31 Stat. 27).
Establishment of commission to adjudicate claims against Spain. Act of Mar. 2, 1901 (31 Stat. 877).
Imports from, reduction in duties on. Act of Dec. 17, 1903 (33 Stat. 3).
Independence of, recognized. J. Res. No. 24, Apr. 20, 1898 (30 Stat. 738).
Intervention by United States, authorized. Act of Mar. 2, 1901 (31 Stat. 895).
Isle of Pines, title to. Act of Mar. 2, 1901 (31 Stat. 895).
Public debt of, restrictions on. Act of Mar. 2, 1901 (31 Stat. 895).
Ratification of acts of United States during occupancy. Act of Mar. 2, 1901 (31 Stat. 895).
Relinquishment of control of, by United States. Act of Mar. 2, 1901 (31 Stat. 895).
Sales of rifles and ordnance to, permitted. Act of Mar. 23, 1910 (36 Stat. 261).
Sanitation. Act of Mar. 2, 1901 (31 Stat. 895).
Stations, coaling and naval, of United States. Act of Mar. 2, 1901 (31 Stat. 895).
Treaties of, restrictions on. Act of Mar. 2, 1901 (31 Stat. 895).
Treaty with United States to embody certain provisions. Act of Mar. 2, 1901 (31 Stat. 895).
Customs duties, imports from Canal Zone. *See* Panama Canal.
Dams, bridges, etc., over or across navigable waters. *See* Corps of Engineers.
Danish West Indian Islands, temporary government for. Secs. 1–8, Act of Mar. 3, 1917 (Pub. No. 389, 39 Stat. —).

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Daughters of the American Revolution, exemption of property owned by, in District of Columbia from taxation. Act of Aug. 15, 1916 (39 Stat. 514).
Exemption of rectory, parsonage, or other pastoral residence from. Id. 515.
Débris Commission, California. *See* Corps of Engineers.
Delaware Bay, Del., Government pier in, near Lewes, to be open to public under regulations to be prescribed by Secretary of War. Act of July 27, 1916 (39 Stat. 394).
Repeal of provision authorizing transfer of, to the Treasury Department. Id.
Department of the Interior:
Establishment of. Sec. 437, R. S.
General powers and duties of the Secretary. Sec. 441, R. S.
Powers and duties of Secretary in relation to Territories. Sec. 442, R. S.
Details of Army officers (*see also* Army officers):
Accept position under Government of Greater Republic of Central America. J. Res. No. 23, Mar. 3, 1897 (29 Stat. 704).
Active or retired, with Panama-California Exposition, San Diego, Cal. J. Res. No. 4, of Jan. 15, 1915 (38 Stat. 1221).
Active or retired, with the Panama-Pacific International Exposition. Act of Mar. 4, 1915 (38 Stat. 1065).
Alaskan railroads. Lieut. Frederick Mears to assist in location and construction of. J. Res. No. 17, May 13, 1914 (38 Stat. 772).
Coast and Geodetic Survey work, topographical parts of. Sec. 4684, R. S.
Allowance of subsistence while so detailed. Sec. 4688, R. S.
Engineer officers to assist Mississippi River Commission. Secs. 3 and 6, Act of June 28, 1879 (21 Stat. 38).
Engineer officers to assist Missouri River Commission. Act of July 5, 1884 (23 Stat. 144).
Engineer officers to superintend construction of lighthouses. Sec. 4664, R. S.
Governor of the West Indain Islands. Sec. 1, Act of Mar. 3, 1917 (Pub. 389, 39 Stat. —).
Grant leave of absence to officer of Corps of Engineers to assist Republic of China on reclamation work of the Huai River; termination of detail, pay during absence, etc. J. Res. No. 18, May 22, 1914 (38 Stat. 772).
Indian education. Sec. 7, Act of June 23, 1879 (21 Stat. 35).
Indian industrial and training school. Act of July 31, 1882 (22 Stat. 181).
Medical officer with Red Cross. Act of Mar. 3, 1911 (36 Stat. 1041).
Ordnance officers for Geological Survey. Act of June 16, 1880 (21 Stat. 274).
Panama-Pacific International Exposition, prohibition against details to other service not applicable to, allowances for in lieu of transportation and mileage, etc. Act of June 23, 1913 (38 Stat. 76).
Details of officers and enlisted men of Navy and Marine Corps to serve under the Government of the Republic of Haiti. Secs. 1–5, Act of June 12, 1916 (39 Stat. 223).
Discharge, Army officers accountable for public property to obtain certificates of nonindebtedness before. *See* Public property.
District of Columbia (*see also* this title under Corps of Engineers):
Anacostia River and Flats—
Acquisition of additional land in connection with reclamation and development of. Act of Mar. 3, 1917 (39 Stat. —).
Adjustment of boundaries and exchange of lands with the Philadelphia, Baltimore and Washington Railroad. Act of Mar. 3, 1917 (39 Stat. ——).
Appointment of commissioners, estimates, etc. *See* Corps of Engineers.

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District of Columbia—Continued.
Aqueduct Bridge, new. *See* Aqueduct Bridge under Corps of Engineers.
Authority to the American Society of Civil Engineers to erect a memorial fountain to Alfred Noble in public grounds of. J. Res. No. —, of May 8, 1916 (39 Stat. 65).
Burial of ex-Union soldiers in Arlington or other cemeteries in. *See* National cemeteries.
Filled canal spaces in added to park system. *See* Corps of Engineers.
Harbor regulations for. *See* Corps of Engineers.
Juvenile Court, record of conviction against any child is not a disqualification for jury duty, for holding office, or for any other public service under the Federal of District Governments. Act of Apr. 27, 1916 (39 Stat. 56).
Persons convicted of crimes in courts of and sentenced to confinement for more than one year may be confined in the District reformatory instead of a penitentiary, etc. Act of Sept. 1, 1916 (39 Stat. 711).
Playground for children, regulations for control of, etc. *See* Corps of Engineers.
Potomac Park, made part of the park system. *See* Corps of Engineers.
Acquisition of lands required for connecting parkway between Potomac Park, Zoological Park, and Rock Creek Park; limitation as to total area to be acquired; to form part of park system of District of Columbia, etc. Act of July 1, 1916 (39 Stat. 282).
Public grounds, Women's Titanic Memorial Association to erect memorial in to heroes of steamship *Titanic*. Sec. 7, Act of Mar. 3, 1917 (39 Stat. —).
Restrictions on lagoons or speedways in. *See* Corps of Engineers.
Reformatory of, persons convicted in District courts and sentenced to confinement for more than one year may serve sentence in instead of in a penitentiary, etc. Act of Sept. 1, 1916 (39 Stat. 711).
Statue to Admiral Dupont in Dupont Circle, Chief of Engineers may grant permission for removal of, etc. Act of Feb. 26, 1917 (Pub. Res. No. 51, 39 Stat. —).
Subsistence allowances to persons traveling on official business outside of. Sec. 13, Act of Aug. 1, 1914 (38 Stat. 680).
Transfer of prisoners heretofore convicted in District courts to serve remainder of term of confinement in. Act of Sept. 1, 1916 (39 Stat. 711).
Wharf property, control of. *See* Corps of Engineers.
District of Columbia militia:
Authority to make contracts, etc. *See* Militia.
Deduction of pay to reimburse for loss of public property, etc. *See* Militia.
Purchase of supplies, etc. *See* Militia.
District of Columbia Naval Militia, authorization of, etc. *See* Militia.
Donation of funds:
Contributed to be expended with public funds for improvement of rivers and harbors; Secretary of War authorized to receive from private parties. *See* Rivers and harbors.
Funds contributed in excess of actual cost of work may be returned to representatives of contributing interests upon approval of Secretary of War, etc. *See* Rivers and harbors.
Dowsett Co. (Ltd.) given permission, within a time limit, to remove certain buildings from Schofield Barracks Military Reservation, Territory of Hawaii. Act of Aug. 29, 1916 (39 Stat. 636).

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Draftsmen in office of the Chief of Engineers. *See* Corps of Engineers.
Du Pont Circle, Wahington, D. C., Chief of Engineers may permit removal of statue of Admiral Du Pont from. Act of Feb. 26, 1917 (Pub. Res. No. 51, 39 Stat. —).
East Coast Canal, Secretary of War authorized to appoint a board of three officers from the Corps of Engineers to examine and appraise the value of the work and franchises of the canal from the St. Johns River to Key West, Fla., with reference to its purchase by the Government and the construction of a free and open waterway, etc. Sec. 15, Act of Mar. 4, 1915 (38 Stat. 1058).
Eight-hour day, establishment of for employees of carriers engaged in interstate and foreign commerce. Secs. 1–4, Act of Sept. 3–5, 1916 (39 Stat. 721).
Employees, Government Printing Office, not to be detailed in other branches of service. *See* Printing and binding.
Employment of military force:
Remove and destroy unlawful inclosures of public lands. Sec. 5, Act of Feb. 25, 1885 (23 Stat. 322).
Timber, felling; unlawful inclosures. Sec. 2460, R. S.
Trespassers, removal. Sec. 1, act of Mar. 3, 1807 (2 Stat. 445).
Tresspass or intrusion in General Grant National Park, Sequoia National Park, or Yosemite National Park for purpose of destroying the game or objects of curiosity therein. Act of June 6, 1900 (31 Stat. 618).
Treason. Secs. 1, 2, 3, 4, 5, 6, 7, and 8, Act of Mar. 4, 1909 (35 Stat. 1088).
Engineer Corps. *See* Corps of Engineers.
Engineer officers, detail of to assist Mississippi and Missouri River Commissions, etc. *See* Details of Army officers.
Enlisted men, President authorized to employ all persons in land and naval service in connection with Coast and Geodetic Survey work. *See* Army.
Enlistments, foreign Governments, ministers of United States may issue writs to prevent American citizens from entering military service. *See* Neutrality.
Estimates:
National Homes for Disabled Volunteer Soldiers. *See* National Homes for Disabled Volunteer Soldiers.
Panama Canal, Canal Zone, etc., to be submitted. *See* Panama Canal.
Europe:
Relief, protection, and transportation of American citizens in, made necessary by existing political disturbances, etc. Joint Res. No. 30, Aug. 3, 1914 (38 Stat. 776).
Relief, protection, and transportation of American citizens in, made necessary by existing political disturbances, etc. Use of officers, employees, and vessels of United States and use of supplies of Naval or Military Establishments, etc. Joint Res. No. 31, Aug. 5, 1914 (38 Stat. 776).
Evidence:
Legislative acts and judicial proceedings, authentication of. *See* Military tribunals.
Little & Brown's edition of Statutes at Large to be competent. *See* Military tribunals.
Records, documents, etc., copies of, in executive departments as. *See* Military tribunals.
Executive departments:
Attorneys practicing before, use of names of Members of Congress or officers to advertise their business. Act of Apr. 27, 1916 (39 Stat. 54).
Certificate of necessity for printing and binding to be furnished. *See* Printing and binding.

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Executive departments—Continued.
Evidence, copies of records, documents, etc., to be received as. *See* Military tribunals.
Executive Mansion, furniture for and inventory of property in. *See* Corps of Engineers.
Explosives for military service, transportation of. *See* Interstate commerce.
Exposition, Panama-Pacific International, building for Government exhibit on Presidio of San Francisco military reservation and use of after close of exhibition. *See* Panama-Pacific International Exposition.
Expositions, property may be transported to or from free or at reduced rates. Sec. 22, Act of Feb. 4, 1887 (24 Stat. 380), as amended by sec. 9, Act of Mar. 2, 1889 (25 Stat. 862).
Expositions or fairs, transportation of public property to or from. *See* Interstate commerce.
Fairs, property may be transported to or from free or at reduced rates. Sec. 22, Act of Feb. 4, 1887 (24 Stat. 380), as amended by sec. 9, Act of Mar. 2, 1889 (25 Stat. 862).
Fairs or expositions, transportation of public property to or from. *See* Interstate commerce.
Federal prisoners:
Deduction from sentence for good conduct. Secs. 5543, 5544, R. S., as amended by Act of Mar. 3, 1875 (18 Stat. 479). *See also* Act of Mar. 3, 1891 (26 Stat. 840), superseded by Act of June 21, 1902 (32 Stat. 397), as amended by Act of Apr. 27, 1906 (34 Stat. 149).
Military prisoners, deductions from sentence for good conduct. Secs. 1, 2, 3, Act of June 21, 1902 (32 Stat. 397).
Parole of. Act of June 25, 1910 (36 Stat. 819), as amended by Act of Jan. 23, 1913 (37 Stat. 650).
Fees, Philippine Islands, to civilian witnesses. *See* Philippine Islands.
Firearms, Philippine Islands, lawful possession of, by officers, soldiers, etc. *See* Philippine Islands.
Fires, setting, on public lands. *See* Public lands.
Fire sufferers, Salem, Mass., relief of, expenditures under Secretary of War. *See* Salem, Mass.
Fishways in navigable waters, authority for construction of. *See* Corps of Engineers.
Flags and ensigns. Secretary of War authorized to loan for purpose of decorating streets during forty-ninth encampment of the Grand Army of the Republic. *See* Grand Army of the Republic.
Floods:
Examinations, surveys, and projects relating to control of. Sec. 3, Act of Mar. 1, 1917 (39 Stat. ------).
Mississippi River, control of. Pars. a–d, Sec. 1, Act of Mar. 1, 1917 (39 Stat. ----).
Sacramento, Cal., control of. Pars. a–c, Sec. 2, Act of Mar. 1, 1917 (39 Stat. ----).
Flood sufferers of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Mississippi, Secretary of War authorized to furnish food, Quartermaster and Medical Department supplies, etc., to. J. Res. No. — of Aug. 3, 1916 (39 Stat. 434).
Authorization for extension of such relief to the flood sufferers of West Virginia. J. Res. — of Aug. 24, 1916 (39 Stat. 534).

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Florida flood sufferers of 1916, Secretary of War authorized to relieve with food, supplies of the Quartermaster and Medical Departments, etc. J. Res. No. __ of Aug. 3, 1916 (39 Stat. 434).

Fords (Mokuumeume) Island naval reservation, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over to War Department for use for military purposes. Act of Aug. 29, 1916 (39 Stat. 568).

Foreign governments, ministers of United States may issue writs to prevent American citizens from enlisting in military service of. *See* Neutrality.

Foregin governments, President authorized to invite all of the great Governments of the world to send representatives to a conference to be charged with the formation of a plan for a court of arbitration or other tribunal to settle international disputes. Act of Aug. 29, 1916 (39 Stat. 618).

Appointment of nine citizens to be representatives of the United States in such a conference. *Id.*

Appropriation made and set aside for expenses of. *Id.*

Compensation of representatives, etc., to be fixed by President.

Foreign officials, entertainment of, in connection with Panama-Pacific International Exposition. *See* Panama-Pacific International Exposition.

Foreign vessels, Philippine Islands, tonnage tax levied on, when entering United States from. *See* Philippine Islands.

Fort Bayard Hospital:

Subject to rules and articles of war. *See* Medical Department.

Treat officers and men of Army, Navy, and Marine Corps. *See* Medical Department.

Fortifications, injuries to mines, torpedoes, etc. *See* Corps of Engineers.

Fort Leavenworth Military Prison changed to United States penitentiary and restored to War Department. *See* Military prison.

Fort McHenry Military Reservation, temporary cession of jurisdiction to State of Maryland over that portion leased to city of Baltimore. J. Res. of Apr. 3. 1916 (39 Stat. 46).

Fort Mason Military Reservation, temporary cession of jurisdiction to State of California over portion used for exposition purposes. *See* Panama-Pacific International Exposition.

Franchises, Philippine Islands, for works of public utility, regulations to be adopted. *See* Philippine Islands.

Gama, Señor Domicio da, thanks of Congress and gold medal presented to, for services as mediator between United States and warring parties in Mexico. *See* Medals.

General Grant National Park. *See* National parks.

Removal of trespassers, etc., from. *See* Employment of military force.

Geological Survey, detail of ordnance officer with. *See* Details of Army officers.

Georgia flood sufferers of 1916, Secretary of War authorized to relieve with food, supplied by the Quartermaster and Medical Departments, etc. J. Res. No. —, of Aug. 3. 1916 (39 Stat. 434).

Gettysburg National Park. *See* National military parks.

Good-conduct time, deductions from sentences of military prisoners. *See* Federal prisoners.

Government Printing Office, employees of, not to be detailed in other branches of service. *See* Printing and binding.

Grand Army of the Republic:

Commissioners of District of Columbia to make special regulations for occasion of forty-ninth encampment, to be held in Washington, September-October, 1915. J. Res. No. 8, sec. 1, of Mar. 3, 1915 (38 Stat., 1222).

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Grand Army of the Republic—Continued.
Loan of ensigns, flags, etc., by Secretary of War for purposes of decorating streets during encampment. Secs. 3 and 4, id. 1223.
Loan of hospital tents, ambulances, horses, drivers, etc., by Secretary of War, for caring for the sick, injured, and infirm during the encampment. Sec. 6, id. 1224.
Permits to use reservations and other public spaces in the city of Washington during encampment, Secretary of War authorized to issue. Sec. 5, id.
Grant Memorial, Gen. Ulysses S., appropriation heretofore made for unveiling and dedicating made available during fiscal year 1917. Act of July 1, 1916 (39 Stat. 291).
Graves of Confederate dead, marking in all national cemeteries and cemeteries at Federal military stations or locations throughout the country. *See* Marking graves of Confederate dead.
Guilford Courthouse National Military Park. *See* National military parks.
Habeas corpus, Philippine Islands, employment, suspension, etc., of writ of. *See* Philippine Islands.
Hague convention, hospital ships. *See* Medical Department.
Haiti, Republic of, detail of officers and enlisted men of Navy and Marine Corps to serve under Government of. Secs. 1–5, Act of June 12, 1916 (39 Stat. 223).
Harbor defenses, injuries to mines, torpedoes, etc. *See* Corps of Engineers.
Harbor lines, establishment and extension of, in navigable waters. *See* Corps of Engineers.
Harbor regulations for the District of Columbia. *See* Corps of Engineers.
Henry Barracks Military Reservation, Gayey, P. R. Transfer of control and jurisdiction over portion known as Magazine Hill to the Navy Department for naval purposes. Act of Aug. 29, 1916 (39 Stat. 568).
Hetch Hetchy Valley Reservoirs, Yosemite National Park, sale to War Department by city and county of San Francisco, Cal., of water required on military reservations in or near the city of San Francisco on certain conditions, etc. Par. (u), sec. 9, Act of Dec. 19, 1913 (38 Stat. 250).
Highways, public land, right of way for. *See* Public lands.
Homesteads, mode of procedure, right of entry, etc. *See* Public lands.
Horses, militia, purchase and maintenance of. *See* Militia.
Hospitals:
Fort Bayard, subject to rules and articles of war. *See* Medical Department.
Fort Bayard, treat officers and men of Army, Navy, and Marine Corps. *See* Medical Department.
Hot Springs, Ark., establishment of, use of hot water, etc. *See* Medical Department.
Hot Springs (S. Dak.) National Sanitarium in connection with National Home for Disabled Volunteer Soldiers. *See* Medical Department.
Hospital and medical supplies, Medical Department authorized to sell to Soldiers' Home at contract price. *See* Soldiers' Home.
Hospital ships, The Hague convention. *See* Medical Department.
Hot Springs Hospital, Arkansas, establishment of, use of hot water, etc. *See* Medical Department.
Hot Springs National Sanitarium, South Dakota, in connection with National Home for Disabled Volunteer Soldiers. *See* Medical Department.
Hunting, National parks, penalty for trespassing and shooting on. *See* National parks.
Index to annual reports of Chief of Engineers from 1866 to 1917, inclusive, printing of 1,500 copies authorized. Sec. 4, Act of July 27, 1916 (39 Stat. 411).

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Indian and colored soldiers, widows of. *See* Pensions.
Indian reservations, removal of persons from. *See* Indians.
Indians:
Agencies—
Consolidated. Sec. 6, Act of Mar. 1, 1883 (22 Stat. 451).
Discontinued. Sec. 2053, R. S., Act of June 22, 1874 (18 Stat. 177).
Discontinued and transferred. Sec. 2054, R. S., and sec. 2059, R. S.
Limited. Sec. 2066, R. S.
Agents—
Appointment. Sec. 2052, R. S.; sec. 1, Act of Feb. 14, 1873 (17 Stat. 437); Act of June 22, 1874 (18 Stat. 147); Act of Aug. 15, 1894 (28 Stat. 286).
Bonds. Sec. 2057, R. S. Act of Mar. 3, 1875 (18 Stat. 451).
Duties. Sec. 2058, R. S., and secs. 4, 5, and 10, Act of Mar. 3, 1875 (18 Stat. 449–451); Act of May 27, 1878 (20 Stat. 86); sec. 9, Act of July 4, 1884 (23 Stat. 98).
Residences. Sec. 2060, R. S.
Term of office. Sec. 2056, R. S. Act of May 17, 1882 (22 Stat. 87).
American captives, moneys due Indians. Sec. 2102, R. S.
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Mode of payment and distribution of goods. Sec. 2086, R. S.; sec. 6, Act of Mar. 3, 1875 (18 Stat. 450); Act of Aug. 15, 1876 (19 Stat. 196).
Payment in goods. Sec. 2082, R. S.
Payment in coin. Sec. 2081, R. S.
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Arms, sale of, prohibited. Sec. 467, R. S.
Arms, etc., trading with hostile and uncivilized, prohibited. Sec. 2136, R. S. and J. Res. No. 20, Aug. 5, 1876 (19 Stat. 216).
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Assault, penalty. Sec. 2142, R. S.
Assault upon United States officials, penalty; jurisdiction of district court. Act June 9, 1888 (25 Stat. 178).
Cattle, sale of, penalty. Act July 4, 1884 (23 Stat. 94).
Children, legitimacy of. Sec. 10, Act June 7, 1897 (30 Stat. 62).
Citizenship, adopting civilized life and allottees. *See* Naturalization.
Civilized life, protection of. Sec. 2119, R. S.
Commissioner of Indian Affairs, duties. Sec. 463, R. S.
Compensation. Sec. 2076, R. S.
Correspondence to excite to war, penalty. Sec. 2113, R. S.
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Crimes and offenses. Sec. 328, Act Mar. 4, 1909, Criminal Code (35 Stat. 1151).
Detail of Army officers—
for Education of. *See* Details of Army officers.
for Industrial and training schools. *See* details of Army officers.
Deeds, acknowledgment of by agents. Sec. 2064, R. S.
Disbursing officers, security additional. Sec. 2075, R. S.
Disbursements, mode of. Sec. 2089, R. S.

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Foreigners entering Indian country without passports, penalty. Sec. 2134, R. S.
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Horse stealing, robbery. Act. Feb. 15, 1888 (25 Stat. 33).
Hostile, annuities. Sec. 2100, R. S.
Hunting on lands, prohibited. Sec. 2137, R. S.
Inspectors. Sec. 2043, R. S.; sec. 6, Act of Feb. 14, 1873 (17 Stat. 463); Act of Mar. 3, 1875 (18 Stat. 422); Act of May 31, 1900 (31 Stat. 224).
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Leaves of absence for agents and employees. Sec. 2074, R. S.
Liquors and firearms, sales of, to Indians in Alaska, penalty. Secs. 142 and 466, Act of Mar. 3, 1899 (30 Stat. 1253).
Liquors, sale of, punishment. Sec. 8, Act of Mar. 1, 1895 (28 Stat. 693).
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Oaths—
Administered by agents. Act of Mar. 1, 1899 (30 Stat. 924).
in Pension claims before agents. Sec. 2, Act of July 26, 1892 (27 Stat. 272).
Offices, holding of two, prohibited. Sec. 2074, R. S.
Payments by special agents, compensation, bond. Sec. 11, Act of Mar. 3, 1895 (28 Stat. 910).
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Allottees preferred for employment. Sec. 5, Act of Feb. 8, 1887 (24 Stat. 390).
Crimes against, to be tried, district court. Act of Mar. 2, 1887 (24 Stat. 464).
Posse commitatus to be used in executing process. Sec. 2153, R. S.
Process, to be executed by marshals. Act of June 4, 1888 (25 Stat. 167).
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Property, injury to, by Indians. Sec. 2156, R. S.
Property, payment for same if reparation can not be made. Sec. 2155, R. S.
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Trade—
Except skins and furs, prohibited. Sec. 2135, R. S.
Prohibited by President. Sec. 2132, R. S.
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Appointment of. Sec. 5, Act of Aug. 15, 1876 (19 Stat. 200).
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Training school, superintendent, bond. Act of Mar. 3, 1899 (30 Stat. 924).
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Treaties—
Abrogation of. Sec. 2080, R. S.; Sec. 2, Act of Mar. 2, 1875 (18 Stat. 449).
None in future. Sec. 2079, R. S. and Sec. 3, Act of June 22, 1874 (18 Stat. 176); Act of June 10, 1876 (19 Stat. 58).
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Depredations. Sec. 5388, R. S. Act June 4, 1888 (25 Stat. 166).
Two offices, holding prohibited; leaves of absences. Sec. 2074, R. S.
White man marrying an Indian woman not to acquire tribal rights. Act Aug. 9, 1888 (25 Stat. 392).
Indian Wars, pension for services in. *See* Pensions.
Indian Wars, pensions to survivors of certain. Secs. 1–3, Act of Mar. 4, 1917 (Pub. 400, 39 Stat. —).
Indigent soldiers, burial of, in national cemeteries. *See* National cemeteries.
Insane, inmates National Homes for Disabled Volunteer Soldiers, care of. *See* National Homes for Disabled Volunteer Soldiers.
Insane natives, Philippine Islands, serving in Army, care of. *See* Philippine Islands.
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Insular Government, Philippine Islands, salary of Army officers detailed to duty under. *See* Philippine Islands.
Interisland traffic, Philippine Islands, regulations governing. *See* Philippine Islands.
Interior, Department of. *See* Department of the Interior.
International arbitration, courts or other tribunals for settlement of all international disputes by. President authorized to invite all of the great Governments of the world to send representatives to a conference to be charged with the formulation of a plan for. Act of Aug. 29, 1916 (39 Stat. 618).
Appointment by President of nine citizens to be representatives of the United States at such a conference. Id.
Compensation of representatives, etc., to be fixed by President. Appropriation made and set aside for expenses of. Id.
International arbitration, declared policy of United States to settle all of its international disputes by mediation or. Id.
Interstate commerce, transportation:
Animals, prevent cruelty; feeding and resting periods. Act of June 29, 1906 (34 Stat. 607).
Eight-hour day for employees of carriers engaged in foreign or. Secs. 1–4, Act of Sept. 3–5, 1916 (39 Stat. 721).
Explosives for military. Sec. 232, Act of Mar. 4, 1909 (35 Stat. 1134).
Property of the United States or property to or from fairs or expositions free or at reduced rates. Sec. 22, Act of Feb. 4, 1887 (24 Stat. 380), as amended by Sec. 9, Act of Mar. 2, 1889 (25 Stat. 862).
Quarantine live stock, notice to carriers. Act of Feb. 2, 1903 (32 Stat. 791).
Intervention by United States in Cuban affairs, authorization for. *See* Cuba.
Isthmian Canal Commission. (*See also* Panama Canal.)
Appointment, qualifications, duties, etc. Sec. 7, Act of June 28, 1902 (32 Stat. 483).
Appropriations available for payment of obligations of. Sec. 4, Act of May 27, 1908 (35 Stat. 387).
Accounts of, audited by Auditor for War Department. Act of Feb. 3, 1905 (33 Stat. 647).
Canal Zone, leases of land in. Act of Feb. 27, 1909 (35 Stat. 658).
Duties, etc., of. *See* Corps of Engineers.
Employees, leaves of absence to. Act of Feb. 24, 1909 (35 Stat. 645).
Employment of engineers, compensation. Sec. 7, Act of June 28, 1902 (32 Stat. 483).
Engineers, offices for. Sec. 7, Act of June 28, 1902 (32 Stat. 483).
Powers conferred on President may be exercised through. Sec. 5, Act of Feb. 27, 1909 (35 Stat. 658).
Isle of Pines, title to. *See* Cuba.
Judge Advocate General's Department, appointments in, from Volunteers. Act of Mar. 2, 1901 (31 Stat. 900).
Judicial proceedings, evidence, authentication of. *See* Military tribunals.
Jury duty, record of conviction against any child in the Juvenile Court of the District of Columbia not a disqualification for. Act of Apr. 27, 1916 (39 Stat. 56).
Justices of the peace, Philippine Islands, Army officers to be, in connection with sale of intoxicating liquors. *See* Philippine Islands.
Juvenile court, District of Columbia, record of conviction against any child in, not a disqualification for jury duty, for holding office, or for any other public service under the Federal or District Governments. Act of Apr. 27, 1916 (39 Stat. 56).

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"Kyle and Young Canal" and the "Morrison Landing extension" of the same, on the Oklawaha River, Florida, acceptance of title by Secretary of War to the land and navigation improvements, etc. Act of July 27, 1916 (39 Stat. 396).

Canal to become free public waterway of the United States. Id.

Lagoons, Potomac Park, District of Columbia, restrictions on. *See* Corps of Engineers.

Land registration, Philippine Islands, procedure in filing claims, etc., in court of. *See* Philippine Islands.

Lands:

Acquisition of, for national cemeteries. *See* National cemeteries.

Condemnation and purchase of, for river and harbor improvement. *See* Corps of Engineers.

Philippine Islands, acquisition of privately owned, for military purposes. *See* Philippine Islands.

Laundresses, hereafter women not allowed to accompany troops as. *See* Army.

Leases:

Land in Canal Zone. *See* Isthmian Canal Commission.

Public lands, Canal Zone. *See* Panama Canal.

Leave of absence; President authorized to grant to officer of Corps of Engineers, to assist Republic of China on reclamation work. *See* Details of Army officers.

Legislative acts, evidence, authentication of. *See* Military tribunals.

Leprosy, home for care and treatment of persons afflicted with. Secretary of War may transfer abandoned military reservation for. Act of Feb. 3, 1917 (Pub. No. 299, 39 Stat. —).

Lessees of water power on Muskingum River, Ohio, whose property was destroyed by Ohio Valley flood of March, 1913, relief of. *See* Corps of Engineers.

Library, Surgeon General's office, binding and location of. *See* Medical Department.

Licenses:

Liquor, Philippine Islands, not to be granted on military reservations or within certain areas. *See* Philippine Islands.

Philippine Islands, coastwise and harbor vessels. *See* Philippine Islands.

to Practice medicine or surgery in Alaska, not to apply to emergency medical relief to natives. Sec. 15, act of Feb. 6, 1909 (35 Stat. 604).

Lighthouse Board, compensation, organization, etc., of. *See* Corps of Engineers.

Lighthouses, construction, inspection, etc., of. *See* Corps of Engineers.

Lincoln Farm Association, acceptance of title from to the homestead of Abraham Lincoln and the log cabin in which he was born, together with the memorial hall inclosing the same, and an endowment fund of $50,000 in relation thereto. After acceptance of the property by the President and Secretary of War its control to be under the Secretary of War. Act of July 17, 1916 (39 Stat. 385).

Lincoln memorial:

Approval of plan and design of commission. J. Res. No. 7, Feb. 1, 1913 (37 Stat. 1022).

Authorized, commission created. Act of Feb. 9, 1911 (36 Stat. 898).

Resident commissioner designated, compensation. Act of Mar. 3, 1913 (37 Stat. 731).

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Liquor licenses:
Disposition of moneys derived from in Alaska. *See* Alaska.
Philippine Islands, not to be granted on military reservations or within certain areas. *See* Philippine Islands.
Liquors:
National Home for Disabled Volunteer Soldiers, loss of appropriation where permit sale of intoxicating. *See* Medical Department.
Prohibition of manufacture and sale of in Alaska. Secs. 1–33, Act of Feb. 14, 1917 (39 Stat. —).
Sale of to Indians, punishment. *See* Indians.
State or territorial homes for disabled soldiers and sailors, loss of appropriation where permit sale of intoxicating. *See* Medical Department.
Locust pest, Philippine Islands, suppression of. *See* Philippine Islands.
Machines, typewriting, restrictions as to price to be paid by Government for. *See* Typewriting machines.
Marine Corps, detail of officers and enlisted men of Navy and, to serve under Government of Republic of Haiti. Secs. 1–5, Act of June 12, 1916 (39 Stat. 223).
Marine Corps. Fort Bayard Hospital, treatment of officers and men at. *See* Medical Department.
Marking graves of Confederate dead; provisions for extended to graves of Confederate soldiers and sailors in all National cemeteries and cemeteries at Federal military stations or locations throughout the country. J. Res. No. 7, Mar. 14, 1914 (38 Stat. 768).
Further continuation for two years of provisions relating to, and providing that the registers shall include the time and place of death of each Confederate soldier prisoner of war. J. Res. No. —, of Apr. 17, 1916 (39 Stat. 52).
Maryland, temporary cession of jurisdiction to State of over that portion of Fort McHenry Military Reservation which has been leased to the city of Baltimore. J. Res. No. —, of Apr. 3, 1916 (39 Stat. 46).
Mears, Frederick, Lieut., detail of to assist in location and construction of Government railroads in Alaska. J. Res. No. 17, May 13, 1914 (38 Stat. 772).
Medals, gold, with thanks of Congress presented to Senors Domicio da Gama, Romulo S. Naon, and Eduardo Suarez for services as mediators between Government of United States and warring parties in Republic of Mexico. J. Res. No. 17, of Mar. 4, 1915 (38 Stat. 1228).
Mediation or arbitration, declared policy of United States to settle all international disputes by. Act of Aug. 29, 1916 (39 Stat. 618).
Mediators, thanks of Congress and gold medals presented to Señors Domicio da Gama, Romulo S. Naón, and Eduardo Suarez for services as between United States and warring parties in Mexico. *See* Medals.
Medical Bulletin, Army, for instruction of medical officers. *See* Medical Department.
Medical Department:
Authorized to sell medical and hospital supplies to soldiers' home at contract price. *See* Soldiers' home.
Commutation direct to soldier, no fee to agent or attorney. Act of Mar. 3, 1891 (26 Stat. 979).
Commutation to persons who can not use artificial limbs. Sec. 4790, R. S.
Fort Bayard Hospital—
Subject to Rules and Articles of War. Act of June 12, 1906 (34 Stat. 255).

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Medical Department—Continued.
Fort Bayard Hospital—Continued.
to Treat officers and men, Navy and Marine Corps. Act of Mar. 2, 1907 (34 Stat. 1172).
Hospital ships, The Hague convention. Sec. 1, Act of Mar. 24, 1908 (35 Stat. 46).
Hot Springs, Ark.—
Creating reservation. Sec. 4, Act of Mar. 3, 1877 (19 Stat. 378); Act of Dec. 16, 1878 (20 Stat. 258); sec. 3, Act of June 16, 1880 (21 Stat. 289).
Estimates, post military establishment. Act of Aug. 4, 1886 (24 Stat. 245); Act of Mar. 3, 1909 (35 Stat. 748).
Hospital, establishment of. Act of June 30, 1882 (22 Stat. 121).
Hot water for additional houses; new bathhouses not to be owned by interested persons. J. Res. No. 8, Mar. 25, 1888 (26 Stat. 619).
Hot water for bathhouses off reservation. J. Res. No. 14, Mar. 3, 1887 (24 Stat. 647).
Hot Springs (S. Dak.) National Sanitarium, establishment. Sec. 1, Act of May 29, 1902 (32 Stat. 282).
Library, binding. Sec. 96, Act of Jan. 12, 1895 (28 Stat. 601).
Library, Surgeon General's Office, Ford's Theater, building for. Act of Apr. 7, 1866 (12 Stat. 23).
National Home for Disabled Volunteer Soldiers, appropriation for, not available for any branch which permits sale of intoxicating liquors. Act Aug. 1, 1914 (38 Stat. 642).
Printing and binding, Army Medical Bulletin for instruction of medical officers. Act of Aug. 1, 1914 (38 Stat. 642).
State or Territorial Homes for disabled soldiers and sailors, appropriation for, not available for any home which permits sale of intoxicating liquors. Act of Aug. 1, 1914 (38 Stat. 642).
State or Territorial Homes for disabled soldiers and sailors, collections from inmates for support of. Act of Aug. 1, 1914 (38 Stat. 642).
Supply depot at Fort Sam Houston, Tex. Acquisition of additional land for and construction of. Act of Aug. 29, 1916 (39 Stat. 636).
Medical and hospital supplies, Medical Department authorized to sell to soldiers' home at contract price. *See* Soldiers' home.
Medical officers, Army Medical Bulletin for instruction of. *See* Medical Department.
Medical officer, detail of, with Red Cross. *See* Details of Army officers.
Medicine and surgery, license to practice in Alaska not to apply to emergency medical relief to natives. Sec. 15, Act of Feb. 6, 1909 (35 Stat. 604).
Memorial amphitheater, Arlington, Va. *See* Arlington memorial amphitheater.
Memorial monument to commemorate the women of the Civil War:
Contribution by the Government for the site and for the building, condition of payment, etc. Act of Oct. 22, 1913 (38 Stat. 233).
Commission to approve site and plans and to supervise expenditures to consist of the Secretary of War, the chairman of the Joint Committee of the Library of Congress, and the president of the American Red Cross. Act of Oct. 22, 1913 (38 Stat. 233).
Commission of Fine Arts also to approve the plans for the memorial. Act of Oct. 22, 1913 (38 Stat. 233).
Memorial to be permanent headquarters of the American Red Cross. Act of Oct. 22, 1913 (38 Stat. 233).

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Memorial monument to commemorate the women of the Civil War—Continued.
Red Cross, American, to be charged with and responsible for the care, keeping, and maintenance of the memorial and grounds, but the title to the site and building shall be in the United States. Act of Oct. 22, 1913 (38 Stat. 233).
Mexican War, pension for services in. *See* Pensions.
Mexico:
National cemetery near city of, subject to regulations of United States national cemeteries. *See* National cemeteries.
Relief and transportation of American citizens in. Act of Apr. 24, 1914 (38 Stat. 346).
Relief and transportation of destitute American citizens in. J. Res. No. 10, Sept. 16, 1913 (38 Stat. 238).
Relief and transportation of destitute American citizens in. Act of July 14, 1916 (39 Stat. 359).
Thanks of Congress and gold medals presented to Señors Domicio da Gama, Romulo S. Naon, and Eduardo Suarez for services as mediators between United States and warring parties of. *See* Medals.
Midshipmen at United States Naval Academy, three for each Senator, Representative, and Delegate in Congress, one for Porto Rico, two for District of Columbia, 10 appointed each year at large, and 15 appointed annually from enlisted men of the Navy. Act of Feb. 15, 1916 (39 Stat. 9).
Military employees, United States commissioners, not to hold or exercise duties of. *See* Civil office.
Military posts:
Funds for not to be used in establishment of military prisons. *See* military prisons.
Indian schools, use of vacant barracks and for normal and industrial training. *See* Details of Army officers.
Post traders, vacancies not to be filled. Act of Jan. 28, 1893 (27 Stat. 426).
Military prison:
Convicts limited to actual subsistence. Act of Feb. 25, 1910 (36 Stat. 210).
Fort Leavenworth changed to United States penitentiary under Department of Justice. Act of June 10, 1896 (29 Stat. 380).
Funds for military posts not to be used in establishment of. Act of June 25, 1910 (36 Stat. 721).
Good conduct allowance for prisoners. Secs. 1, 2, and 3, Act of June 21, 1902 (32 Stat. 397).
Military prisoners:
Deduction from sentences for good conduct. *See* Federal prisoners.
Parole of. *See* Federal prisoners.
Military reservations:
Abandoned, disposition of. *See* Public property.
Abandoned, Secretary of War authorized to transfer for use as home for care and treatment of persons afflicted with leprosy. Act of Feb. 3, 1917 (Pub. No. 299, 39 Stat. —).
Henry Barracks, Cayey, P. R. Transfer of control and jurisdiction over portion known as Magazine Hill to the Navy Department for naval purposes. Act of Aug. 29, 1916 (39 Stat. 568).
Miley, Fort, Cal. *See* Winfield Scott, Fort, Cal.
Offenses on, not prohibited by Federal law, punishment of. *See* Public property.

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Military reservations—Continued.
Philippine Islands—
Acquisition of, arrest on, claims for private lands within, etc. *See* Philippine Islands.
Civil authorities not to interfere with military admisistration of lands reserved for. *See* Philippine Islands.
Liquor licenses not to be granted on or within certain areas. *See* Philippine Islands.
Presidio of San Francisco, civil police may be called upon to make arrests of trespassers, etc. Act of June 4, 1888 (25 Stat. 167).
Presidio of San Francisco, Cal. Consent of United States to the closing of certain public streets of the city of San Francisco east of the eastern boundary of, and their utilization as site for a State normal school, etc. Act of Aug. 29, 1916 (39 Stat. 637).
Presidio of San Francisco, Cal. Panama-Pacific International Exposition Co., and its successors in interest, may be authorized to occupy portion of, with a palace of fine arts. Id.
Extension of cession of jurisdiction to State of California over part to be occupied during such occupancy, and to terminate on revocation of the permit, etc. Id.
Failure to remove the buildings on revocation of the permit to vest title to them in the United States. Id. 638.
Puuloa, Pearl Harbor, Island of Oahu, Territory of Hawaii. Transfer of jurisdiction and control over to the Navy Department for use for naval purposes. Id. 642.
Sam Houston, Fort, Tex. Acquisition of additional land at, and construction of supply depots for the Quartermaster Corps, the Medical Department, the Corps of Engineers, and the Signal Corps. Id. 636.
Shelter, temporary, for troops on Canal Zone. Portion of money appropriated for acquisition of site and construction of, above supply depots may be used for providing. Id.
No part of money so appropriated to be paid for commutation of fuel or quarters for enlisted men. Id.
San Jacinto, Tex., county or city of Galveston and other local interests to quiet all claims to title to. Act of July 27, 1916 (39 Stat. 398).
Schofield Barracks, Territory of Hawaii. The Dowsett Co. (Ltd.) given permission, within a time limit, to remove certain buildings from. Act of Aug. 29, 1916 (39 Stat. 636).
Vancouver Barracks, Wash. Acquisition of additional lands and construction of suitable target ranges, etc., on. Id. 638.
Winfield Scott, Fort, Cal. Construction of road connecting, within the Presidio of San Francisco, Cal., with city and county road leading to Fort Miley. Id. 637.
Wood, Fort (Bedloes Island), New York Harbor, Secretary of War authorized to accept funds raised by popular subscription through the New York World for construction of electric lighting plant for illuminating the Statue of Liberty on. Sec. 5, Act of July 27, 1916 (39 Stat. 411).
Wright, Fort H. G., N. Y. Exchange of right of way to, for easement in other lands. Act of Feb. 14, 1917 (39 Stat. —).
Military roads:
Atlantic & Pacific Railroad, post route and military road. *See* Transportation.
Northern Pacific Railroad, post route and military road. *See* Transportation.

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Military roads—Continued.
Southern Pacific Railroad, post route and military road. *See* Transportation.
Union & Central Pacific Railroad, post route and military road. *See* Transportation.
Military service, foreign countries, ministers of United States in, may issue writs to prevent American citizens from enlisting in. *See* Neutrality.
Military supplies, use of, in connection with relief, protection, and transportation of American citizens in Europe, made necessary by existing political disturbances. *See* Europe.
Military telegraph operators, Civil War, record and certificate of service to persons who serve as. Act of Jan. 26, 1897 (29 Stat. 497).
Military tribunals:
Accused may testify. Act of Mar. 16, 1878 (20 Stat. 30).
Constitution, composition, jurisdiction, etc. Act of June 18, 1898 (30 Stat. 483).
Consuls, United States, copies of records, etc. Sec. 896, R. S.
Closed sessions of court-martial trials. Sec. 2, Act of July 27, 1892 (27 Stat. 278).
Embezzlement of public money; transcript of books, Treasury. Sec. 887, R. S.
Evidence, Little & Brown's edition of the statutes to be competent. Sec. 908, R. S.
Evidence, rules, witnesses not excluded on account of color. Sec. 858, R. S., as amended by Act of June 29, 1906 (34 Stat. 618).
Executive departments, records, documents, etc., copies of. Sec. 882, R. S.
Incriminating questions. Sec. 860, R. S.
Journals of Congress. Sec. 895, R. S.
Legislative acts and judicial proceedings, authentication of. Sec. 905, R. S.
Military commissions, spies. Sec. 2, Act of Apr. 10, 1806 (2 Stat. 371); sec. 4, Act of Feb. 13, 1862 (12 Stat. 340); sec. 38, Act of Mar. 3, 1863 (12 Stat. 737).
Prisoners, good conduct allowance. Secs. 1, 2, and 3, Act of June 21, 1902 (32 Stat. 397).
Records not appertaining to court, to be proved. Sec. 906, R. S.
Records, etc., office of Solicitor of the Treasury. Sec. 883, R. S.
Reporters. Sec. 1203, R. S.; sec. 2, Act of June 23, 1874 (18 Stat. 244).
Returns, copies for returns office. Sec. 888, R. S.
Witnesses compelled to attend. Sec. 1202, R. S.
Witnesses, refusal to appear or testify. Act of Mar. 2, 1901 (31 Stat. 950).
Militia:
Arms and equipments, distribution to States. Sec. 1670, R. S.
Arms and ordnance stores, crediting for issue during Civil War. Sec. 3, Act of Mar. 3, 1875 (18 Stat. 455).
District of Columbia—
Militia of—
Authority to make contracts and leases and expenditures for heat, light, etc. Act of Apr. 27, 1904 (33 Stat. 389).
Deduction of pay to reimburse for public property lost, etc.; also providing an allowance for clothing and equipment. Sec. 1, Act of Mar. 2, 1911 (36 Stat. 1004). Also supplementing the ration.
Purchase of supplies and procurement of services for, in open market. Act of May 26, 1908 (35 Stat. 303).

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Militia—Continued.
District of Columbia—Continued.
Naval Militia of—
Secs. 1 to 5, Act of May 11, 1898 (30 Stat. 404).
Horses, purchase and maintenance of; use of appropriation forbidding (temporary). Act of Mar. 3, 1909 (35 Stat. 694).
Issue of Springfield rifles to States. Act of Feb. 24, 1897 (29 Stat. 592).
Ordnance and ordnance stores issued to, credit for, Act of Mar. 2, 1899 (25 Stat. 833).
Ordnance and ordnance stores, replacing stores carried into war with Spain. Act of Mar. 3, 1899 (30 Stat. 1073).
Purchase of Army supplies for, credit for. Sec. 3, Act of Feb. 24, 1897 (29 Stat. 592), as amended by Act of Mar. 15, 1898 (30 Stat. 326).
Mining claims, Philippine Islands, on military reservations. *See* Philippine Islands.
Mines, torpedoes, etc., for harbor defenses, injuries to. *See* Corps of Engineers.
Mississippi Centennial Exposition at Gulfport, Miss., transfer of Government exhibit at the Panama-California International Exposition to, at the close of the last-named exposition. J. Res. No. — of Sept. 8, 1916 (39 Stat. 854).
Government exhibit board authorized to repair and rearrange the Government exhibit before transferring it to the Mississippi Centennial Exposition. Sec. 3, id. 855.
Laws or parts of laws relating to the Government exhibit, a Government exhibit board, including detail of civilians and Army and Navy officers, etc., continued and made applicable to the Mississippi Centennial Exposition. Sec. 2, id. 854.
United States not responsible for any bond, debt, contract, etc., in connection with such exposition. Sec. 4, id. 855.
Mississippi River floods, control of, Pars. a-d, Sec. 1, Act of Mar. 1, 1917 (39 Stat. —).
Mississippi River flood, Secretary of War authorized to loan, issue or use quartermaster's and medical supplies for relief of destitute persons in districts overflowed by. J. Res. No. —, of Feb. 15, 1916 (39 Stat. 11).
Mississippi River flood sufferers of 1916, Secretary of War authorized to relieve with food, supplies of the Quartermaster and Medical Departments, etc. J. Res. No. — of Aug. 3, 1916 (39 Stat. 434).
Mississippi River Commission, creation, duties, headquarters of, etc. *See* Corps of Engineers.
Mississippi River, piers and cribs in, snag boats and water gauges on, South Pass of, etc. *See* Corps of Engineers.
Missouri Militia, pensionable status of. *See* Pensions.
Missouri River Commission, composition, creation, duties, etc. *See* Corps of Engineers.
Mokuumeume (Fords) Island Naval Reservation, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over to War Department for use for military purposes. Act of Aug. 29, 1916 (39 Stat. 568).
Money, Canal Zone, received from service, supplies, etc., disposition of. *See* Panama Canal.
Monuments in national cemeteries, destroying and injuring trees and. *See* National cemeteries.
Moro Province, Philippine Islands, government of, use of Army in aid of civil authorities, etc. *See* Philippine Islands.
Murray, Arthur, Maj. Gen., United States Army, retention of on active list until close of Panama-Pacific International Exposition. *See* Army officers.

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Muskingum River, Ohio, relief of lessees of water power on, whose property was destroyed by Ohio Valley flood of March, 1913. *See* Corps of Engineers.
Naon, Señor Romulo S., thanks of Congress and gold medal presented to for services as mediator between United States and warring parties in Mexico. *See Medals.*
National archives building, District of Columbia. *See* Archives building, national.
National cemeteries:
Acquisition of lands for, by Secretary of War. Sec. 4870, R. S.
Appraisement of land appropriated for, by court. Sec. 4871, R. S.
Care and preservation of cemetery near Mexico City in which are buried officers and soldiers of the United States. Sec. 4879, R. S.
Cemetery in Mexico to be subject to rules and regulations affecting national cemeteries within the United States. Sec. 4880, R. S.
Criminal offenses, defacing, etc., penalty. Sec. 4881, R. S.
Destroying or injuring monuments, trees, etc., prohibited. Sec. 4881, R. S.
Encroachments by railroads forbidden. Act of Mar. 2, 1895 (28 Stat. 949).
Expenses for burial of ex-Union soldiers, etc., in Arlington Cemetery or other cemeteries in the District of Columbia to be disbursed by Secretary of War. Act of Mar. 3, 1899 (30 Stat. 1108).
Indigent soldiers, burial. Act of Mar. 3, 1899 (30 Stat. 1108), amended by Act of April 28, 1904 (33 Stat. 495); sec. 1, Act of June 25, 1910 (36 Stat. 724).
Land, acquisition of. Sec. 4870, R. S., and Act of July 24, 1876 (19 Stat. 99); Act of Mar. 2, 1877 (19 Stat. 269).
Marking graves of Confederate dead in all cemeteries at Federal military stations, and, or locations throughout the country. *See* Marking graves of Confederate dead.
Mexico:
Near city of. Sec. 4879, R. S.
Subject to rules and regulations of United States national military cemeteries. Sec. 4880, R. S.
Payment for land. Sec. 4872, R. S.
Railroads not to encroach upon. Act of Mar. 2, 1895 (28 Stat. 949); sec. 1, Act of June 25, 1910 (36 Stat. 723); sec. 1, Act of Mar. 4, 1911 (36 Stat. 1399).
Roadways within corporate limits of cities, towns, etc., and not owned by United States not to be repaired, and no appropriation to be used for the maintenance of more than a single approach to. Act of July 1, 1916 (39 Stat. 286).
Secretary of War—
to Appoint superintendents and erect buildings. Sec. 4873, R. S.
to Pay appraised value of lands. Sec. 4872, R. S.
Superintendents are authorized to make arrests. Sec. 2, Act of Mar. 3, 1897 (29 Stat. 621).
Superintendent to make arrests. Sec. 4881, R. S.
National defense secrets, Philippine Islands, jurisdiction over offense. *See* Philippine Islands.
National Homes for Disabled Volunteer Soldiers:
Accounts. Act of Aug. 18, 1894 (28 Stat. 411); Act of Mar. 3, 1901 (31 Stat. 1178); Act of Apr. 28, 1904 (33 Stat. 500).
Balances, disposal of. Act of Oct. 2, 1888 (25 Stat. 543).

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National Homes for Disabled Volunteer Soldiers—Continued.
Board of managers, appointment of new members. (Pub. Res. No. 54 of Mar. 3, 1917, 39 Stat. —.)
Bond, assistant treasurer. Act of June 6, 1900 (31 Stat. 636).
Bonds of depositaries. Sec. 2, Act of July 9, 1886 (24 Stat. 129).
Bonds, officers'. Act of Mar. 3, 1901 (31 Stat. 1178).
Bonds of treasurers. Act of Aug. 18, 1894 (28 Stat. 412).
Branch homes, establishment, sites for. Sec. 4, Act of Mar. 21, 1866 (14 Stat. 10); Sec. 1, Act of Jan. 23, 1873 (17 Stat. 417); Sec. 4830, R. S., and Act of July 7, 1898 (30 Stat. 668).
Branches, officers', qualifications. Sec. 4829, R. S., and Act of Apr. 11, 1892 (27 Stat. 15), as amended by Act of June 28, 1902 (32 Stat. 472).
Citizens as managers. Sec. 4826, R. S.
Duties, board of managers. Sec. 4834, R. S.
Election, board of managers. Sec. 4827, R. S., and Act of Mar. 3, 1901 (31 Stat. 1178).
Estimates. Act Oct. 2, 1888 (25 Stat. 543).
Estimates, detailed. Act of Mar. 3, 1879 (20 Stat. 390).
Estimates, itemized. Act of Aug. 4, 1886 (24 Stat. 251).
Exemptions of medical officers. Act Feb. 9, 1897 (29 Stat. 517).
Expenditures. Act of Mar. 3, 1887 (24 Stat. 539).
Expenses, board of managers. Sec. 4828, R. S., and Act of Aug. 18, 1894 (28 Stat. 412).
Headquarters established and hereafter to be maintained at the Central Branch, National Military Home, Ohio. Act of July 1, 1916 (39 Stat. 297).
Inmates subject to Articles of War. Sec. 4835, R. S. Held in 1870 unconstitutional. In re Kelly, 71 Fed. Rep. 545.
Insane, building for. Act of Mar. 3, 1881 (21 Stat. 447).
Insane patients. Act Aug. 7, 1882 (22 Stat. 330).
Jurisdiction, recession. Act of Mar. 3, 1901 (31 Stat. 1175).
Laws, documents, and records to be furnished. Sec. 4837, R. S., and Act of July 26, 1894 (28 Stat. 159).
Loss of appropriation where permit sale of intoxicating liquors. *See* Medical Department.
Mail sent free. Act of Aug. 18, 1894 (28 Stat. 412).
Money, how drawn. Act of Mar. 3, 1875 (18 Stat. 359), amended by Act of Mar. 4, 1909 (35 Stat. 1012).
National Sanitarium in connection with, at Hot Springs, S. Dak. *See* Medical Department.
New buildings. Act of Mar. 3, 1879 (20 Stat. 390).
Officers not connected with liquor traffic. Act of Mar. 3, 1887 (24 Stat. 540).
Organization. Sec. 4825, R. S.
Outdoor relief. Act of Aug. 23, 1894 (28 Stat. 492).
Pay, rates, classified. Act of Aug. 18, 1894 (28 Stat. 412); Act of Mar. 2, 1895 (28 Stat. 952).
Pensions due inmates paid to treasurers. Act of Aug. 7, 1882 (22 Stat. 322).
Pensions—
Divided with wife. Sec. 4766, R. S., and Act of Mar. 3, 1899 (30 Stat. 1379).
to Inmates, how paid. Sec. 2, Act of Feb. 26, 1881 (21 Stat. 350); Act of July 1, 1902 (32 Stat. 564).

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National Homes for Disabled Volunteer Soldiers—Continued.
Persons entitled to benefits. Sec. 4832, R. S., and Sec. 5, Act of July 5, 1884 (23 Stat. 121); Sec. 2, Act of Mar. 2, 1887 (24 Stat. 444); Sec. 5, Act of July 23, 1888 (25 Stat. 341); Act of May 26, 1900 (31 Stat. 217), amended by Act of Mar. 4, 1909 (35 Stat. 1012), Sec. 1, Act of June 25, 1910 (36 Stat. 736); and Act of Mar. 3, 1915 (38 Stat. 853).
Purchases—
by Board of Managers. Act of July 1, 1898 (30 Stat. 640).
Supplies, after advertisement. Act Mar. 3, 1879 (20 Stat. 390); Act of June 11, 1896 (29 Stat. 445).
Receipts from sales. Act of Aug. 18, 1894 (28 Stat. 412).
Repairs, funds for. Act of June 4, 1897 (30 Stat. 54).
Salaries, estimates. Act of Aug. 5, 1892 (27 Stat. 384).
Sites, condemnation of land for. Act of July 19, 1897 (30 Stat. 105).
State and Territorial homes to be paid for care of disabled soldiers and sailors. Sec. 4825, R. S., and Act of Aug. 27, 1888 (25 Stat. 450); Act of Apr. 28, 1904 (33 Stat. 504).
States to pay half. Act of Mar. 2, 1889 (25 Stat. 975); Act of Apr. 28, 1904 (33 Stat. 504); Act of May 28, 1908 (35 Stat. 419); Act of May 4, 1909 (35 Stat. 1012).
Supported by appropriations. Sec. 4831, R. S.; Act of Mar. 3, 1875 (18 Stat. 359).
Transfers of inmates. Act of Aug. 23, 1894 (28 Stat. 492).
Transportation at reduced rates. Sec. 9, Act of Mar. 2, 1889 (25 Stat. 855).
Traveling expenses, officers. Act of Aug. 18, 1894 (28 Stat. 412).
Vacancies occurring in membership of board of managers of, not to be filled until the whole number of members of such board is reduced to five, and thereafter the number of members constituting such board shall not exceed five. Act of June 23, 1913 (38 Stat. 43).
National memorial celebration and peace jubilee to be held at Vicksburg, Miss., during 1917, appropriation for, provisions relative to expenditure of, etc. Act of Sept. 8, 1916 (39 Stat. 812).
National military parks:
Antietam battlefield—
Locating, preserving, marking, etc., lines of battle. Act of August 30, 1890 (26 Stat. 401); Act of Aug. 5, 1892 (27 Stat. 377); Act of Mar. 3, 1893 (27 Stat. 599); Act of Mar. 2, 1895 (28 Stat. 950); Act of June 11, 1896 (29 Stat. 443).
Secretary of War to have supervision of. Act of Aug. 30, 1890 (26 Stat. 401).
Chickamauga and Chattanooga National Military Park, establishment of and general provisions concerning. Act of Aug. 19, 1890 (26 Stat. 333); Act of Mar. 3, 1891 (26 Stat. 978); Act of Aug. 5, 1892 (27 Stat. 376); Act of Mar. 3, 1893 (27 Stat. 598); Act of Aug. 18, 1894 (28 Stat. 408); Act of Mar. 2, 1895 (28 Stat. 945).
Donation of cannon, etc. Act of Aug. 5, 1892 (27 Stat. 376).
Donation of land for roads. Act of Mar. 3, 1893 (27 Stat. 599).
Injury to monuments, trees, etc.; penalty. Sec. 10, Act of Aug. 5, 1892 (27 Stat. 376).
Leases of lands within. Act of Aug. 5, 1892 (27 Stat. 376).
Location of State monuments. Act of June 4, 1897 (30 Stat. 43).
Restriction on erection of monuments in. Act of Feb. 26, 1896 (29 Stat. 21).

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National military parks—Continued.
Chickamauga and Chattanooga National Military Park, etc.—Continued.
Right of way to Chattanooga Rapid Transit Co. Act of May 7, 1898 (30 Stat. 399).
States may ascertain and mark lines of battle therein. Sec. 8. Act of Aug. 19, 1890 (26 Stat. 333).
Use of material in park in erection of monuments by States. Joint Res. No. 8, Oct. 2, 1893 (28 Stat. 12).
Commissions—
Vacancies occurring by death or resignation in offices of commissioners not to be filled. Act of Aug. 24, 1912 (37 Stat. 442).
Vacancies, until vacation by all members, to be filled by Secretary of War as member ex officio; and after such vacation duties to be performed under the Secretary of War. Id.
Gettysburg National Park—
Acceptance of land from Battlefield Memorial Association. Act of Feb. 11, 1895 (28 Stat. 651).
Acquisition of additional land. Secs. 4, 5, and 9, Act of Feb. 11, 1895 (28 Stat. 651).
Acquisition of lands. Joint Res. No. 30, June 5, 1894 (28 Stat. 584).
Commissioners, compensation, duty, etc. Sec. 3, Act of Feb. 11, 1895 (28 Stat. 651).
Continuing surveys, improvements, etc. Act of Aug. 18, 1894 (28 Stat. 405).
Destroying, injuring, etc., statues, fences, shrubbery, trees, etc.: penalty. Sec. 7, Act of Feb. 11, 1895 (28 Stat. 651).
Erection of monuments. Act of Mar. 3, 1887 (24 Stat. 535); act. of Oct. 2, 1888 (25 Stat. 538); sec. 8, Act of Feb. 11, 1895 (28 Stat. 651).
Improvement of roads, etc. Act of June 10, 1896 (29 Stat. 384).
Lease of lands within. Act of June 4, 1897 (30 Stat. 44).
Monuments and avenues for marking positions of troops, etc. Act of Mar. 3, 1893 (27 Stat. 599).
Secretary of War to provide regulations. Sec. 6, Act of Feb. 11, 1895 (28 Stat. 651).
Specimens of arms, etc., used in battle to be furnished. Act of July 27, 1892. (27 Stat. 276).
Guilford Courthouse National Military Park—
Boundaries of. Sec. 1. Act of Mar. 2, 1917 (39 Stat. ——).
Commissioners for. Sec. 4, id.
Duties of commissioners. Sec. 5, id.
Establishment of. Sec. 1, id.
Mutilation of monuments, etc., on. Sec. 7, id.
Pay of commissioners. Sec. 4, id.
Placed under control of Secretary of War. Sec. 2, id.
Secretary of War may acquire additions to. Sec. 3, id.
States may mark lines of battle, etc., on. Sec. 6, id.
Trespassing upon, etc. Sec. 7, id.
Shiloh National Military Park—
Appropriation for, etc. Sec. 8, Act of Dec. 27, 1894 (28 Stat. 597).
Commissioners, compensation, duty, etc. Secs. 4 and 5, Act of Dec. 27, 1894 (28 Stat. 597).
Condemned cannon balls, etc., to be furnished to. Act of June 11, 1896 (29 Stat. 442).

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National military parks—Continued.
Shiloh National Military Park—Continued.
Establishment of, and general provisions. Act of Dec. 27, 1894 (28 Stat. 597).
Injuring or destroying monuments, fences, shrubbery, trees, etc. Sec. 7, Act of Dec. 27, 1894 (28 Stat. 597).
Leases of lands within. Sec. 3, Act of Dec. 27, 1894 (28 Stat., 597).
Location of office, limitation on purchase of land, etc. Act of Mar. 2, 1895 (28 Stat. 945).
Marking lines of battle, etc. Sec. 6, Act of Dec. 27, 1894 (28 Stat. 597).
Vicksburg National Military Park—
Acquisition of lands for. Sec. 2, act of Feb. 21, 1899 (30 Stat. 841).
Commissioners, duties, salary, etc. Secs. 4 and 5, act of Feb. 21, 1899 (30 Stat. 842).
Construction of. Sec. 8, Act of Feb. 21, 1899 (30 Stat. 843).
Establishment of, extent, etc. Act of Feb. 21, 1899 (30 Stat. 841).
Injury to monuments, trees, etc.; Penalty. Sec. 7, Act of Feb. 21, 1899 (30 Stat. 843).
Leases of lands within. Sec. 3, Act of Feb. 21, 1899 (30 Stat. 841).
State monuments, erection. Sec. 6, Act of Feb. 21, 1899 (30 Stat. 842).
National parks:
Ejectments from lands purchased for. Sec. 4, Act of Mar. 3, 1897 (29 Stat. 621).
General Grant; employment of military force to prevent trespassers or intruders from destroying the game or objects of curiosity therein. Act of June 6, 1900 (31 Stat. 618).
Penalty for hunting, shooting, trespassing, etc. Act of Mar. 3, 1897 (29 Stat. 621).
Removal of trespassers, etc., from General Grant, Sequoia, and Yosemite. *See* Employment of military force.
Sequoia; employment of military force to prevent trespassers or intruders from destroying the game or objects of curiosity therein. Act of June 6, 1900 (31 Stat. 618).
Yellowstone National Park—
Belongs to judicial district of Wyoming. Sec. 2, Act of May 7, 1894 (28 Stat. 73).
Commissioners, duties of: Trials of offenders, appeals, limits of authority, etc. Secs. 5 and 7, Act of May 7, 1894 (28 Stat. 73).
Deputy marshals and terms of court. Sec. 6, Act of May 7, 1894 (28 Stat. 73).
Employees; appointment, compensation, etc. Act of Mar. 3, 1883 (22 Stat. 626).
Establishment. Sec. 2474, R. S.
Jail and office building. Sec. 9, Act of May 7, 1894 (28 Stat. 73).
Leases within authorized. Act of Aug. 3, 1894 (28 Stat. 222).
Penal provisions relating to hunting, fishing, violation of regulations, etc. Sec. 4, Act of May 7, 1894 (28 Stat. 73).
Protection of fish and game and removal of tresspassers, etc. Sec. 2475, R. S.
Punishment of offenses under Wyoming laws. Sec. 3, Act of May 7, 1894 (28 Stat. 73).
Road extensions and improvements to be under Chief of Engineers. Act of June 6, 1900 (31 Stat. 625).
Secretary of Interior to have control. Sec. 2475, R. S.

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National Parks—Continued.
Yellowstone National Park—Continued.
Secretary of the Interior to make regulations for management, care, and protection of. Sec. 4, Act of May 7, 1894 (28 Stat. 73).
Under exclusive jurisdiction of the United States. Sec. 1, Act of May 7, 1894 (28 Stat. 73).
Yosemite; employment of military force to prevent trespassers or intruders from destroying the game or objects of curiosity therein. Act of June 6, 1900 (31 Stat. 618).
National Sanitarium, Hot Springs, S. Dak., in connection with National Home for Disabled Volunteer Soldiers. *See* Medical Department.
Native wines, Philippine Islands, sale of, to soldiers, etc. *See* Philippine Islands.
Naturalization:
Alien enemies not admitted. Sec. 2171, R. S.
Aliens of African nativity and descent. Sec. 2169, R. S.; and Act of Feb. 18, 1875 (18 Stat. 318).
Aliens, declared intention, oath, residence, etc. Sec. 2165, R. S.; and Act of Feb. 1, 1876 (19 Stat. 2) replaced by secs. 3 and 4, Act of June 29, 1906 (34 Stat. 596).
Children of naturalized persons. Sec. 2172, R. S., as amended by sec. 5, Act of Mar. 2, 1907 (34 Stat. 1229).
Declaration of intention, how made. Sec. 5, Act of June 29, 1906 (34 Stat. 598).
False certificate of citizenship, penalty. Sec. 74, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1102).
Indians adopting civilized life and allottees. Sec. 6, Act of Feb. 8, 1887 (24 Stat. 390).
Minor residents. Sec. 2167, R. S., replaced by sec 4, Act of June 29, 1906 (34 Stat. 596).
Petitions filed in term time or vacation. Sec. 6, Act of June 29, 1906 (34 Stat. 598).
Residence required. Sec. 2170, R. S., as amended by sec. 10, Act of June 29, 1906 (34 Stat. 599).
Restrictions, qualifications, procedure, etc. Act of June 29, 1906 (34 Stat. 598).
Widow and dependent children of declarants. Sec. 2168, R. S., replaced by sec. 4, Act of June 29, 1906 (34 Stat. 598).
Naval Academy, United States, appointment of 3 midshipmen at, for each Senator, Representative, and Delegate in Congress, 1 for Porto Rico, 2 for District of Columbia, 10 appointed each year at large, and 15 appointed annually from enlisted men of the Navy. Act of Feb. 15, 1916 (39 Stat. 9).
Naval Militia, District of Columbia, authorization of, etc. *See* Militia.
Naval radio station, Canal Zone. *See* Panama Canal.
Naval radio stations: Lands of the United States under control of a particular department or other branch of the Government that have been or may hereafter be mutually selected as site for naval radio station may be transferred to control and jurisdiction of Navy Department for use as radio stations or other naval purposes. Act of Aug. 29, 1916 (39 Stat. 606).
Naval reservations, Fords (Mokuumeume) Island, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over portion of, to War Department for military purposes. Act of Aug. 29, 1916 (39 Stat. 568).
Navigable waters:
Authority for construction of fishways in. *See* Corps of Engineers.
Bridges, dams, etc., over or across. *See* Corps of Engineers.

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Navigable waters—Continued.
Harbor lines, establishment and extension of. *See* Corps of Engineers.
Mississippi River Commission, creation, duties, headquarters of, etc. *See* Corps of Engineers.
Mississippi River, piers and cribs in, snag boats and water gauges on, South Pass of, etc. *See* Corps of Engineers.
Missouri River Commission, composition, creation, duties, etc., of. *See* Corps of Engineers.
New York Harbor, regulations governing, etc. *See* Corps of Engineers.
Obstruction of, by bridges, etc., navigable rivers form public highways, etc. *See* Corps of Engineers.
Porto Rico, permits for construction of works in. *See* Porto Rico.
Public works, unauthorized use of. *See* Corps of Engineers.
Rivers and harbors works, estimates, reports, surveys, etc. *See* Corps of Engineers.
Wharf property, District of Columbia, control of. *See* Corps of Engineers.
Navigation laws, Philippine Islands, administration of, etc. *See* Philippine Islands.
Navigation, obstructions to, penal clauses, removal of sunken vessels, wrecks, etc. *See* Corps of Engineers.
Navy Department:
Fords (Mokuumeume) Island Naval Reservation, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over, to War Department. Act of Aug. 29, 1916 (39 Stat. 568).
Puuloa Military Reservation, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over, by War Department to, for use for naval purposes. Id. 642.
Navy, detail of officers and enlisted men of Marine Corps and, to serve under Government of Republic of Haiti. Secs. 1–5, Act of June 12, 1916 (39 Stat. 223).
Navy, Fort Bayard Hospital, treatment of officers and men of, at. *See* Medical Department.
Neutrality, ministers of United States in foreign countries may issue writs to prevent enlistment of Americans in military service of foreign governments. Sec. 4090, R. S.
New Panama Canal Co., purchase of rights of. *See* Panama Canal.
New York Harbor, regulations governing, etc. *See* Corps of Engineers.
New York World, Secretary of War authorized to accept fund raised by public subscription by, for construction of electric lighting plant for illumination of the Statue of Liberty on Bedloes Island, New York Harbor. Sec. 5, Act of July 27, 1916 (39 Stat. 411).
Nicaragua Canal, as alternative route, authorized. *See* Panama Canal.
Nicaragua, concessions from. *See* Panama Canal.
Noble, Alfred, erection of a memorial fountain to, in public grounds of District of Columbia by American Society of Civil Engineers. J. Res. No. — of May 8, 1916 (39 Stat. 65).
Nonindebtedness, Army officers accountable for public property to secure certificates of, before discharge. *See* Public property.
North Carolina flood sufferers of 1916, Secretary of War authorized to relieve with food, supplies of Quartermaster and Medical Departments, etc. J. Res. No. — of Aug. 3, 1916 (39 Stat. 434).
Northern Pacific Railroad, post route and military road. *See* Transportation.
Nurses, Army, pensionable status. *See* Pensions.

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Oaths:
Pension claims, etc., before authorized officer. *See* Pensions.
Philippine Islands, who may administer. *See* Philippine Islands.
Postmasters may administer, as to pension matters. *See* Pensions.
Offenses on high seas, Philippine Islands, jurisdiction over. *See* Philippine Islands.
Offenses on military reservations, not prohibited by Federal law, how punished. *See* Public property.
Office, right to hold not forfeited on conviction in the juvenile court, District of Columbia. Act of Apr. 27, 1916 (38 Stat. 56).
Officers and employees, use of, in affording relief, protection, and transportation to American citizens in Europe, made necessary by existing political disturbances. *See* Europe.
Officers, use of names of for advertising purposes by attorneys practicing before executive departments. Act of Apr. 27, 1916 (29 Stat. 54).
Official business, subsistence allowance to be paid to persons traveling outside the District of Columbia on. *See* District of Columbia.
Ohio River improvement as to locks and dams, etc., not placed under jurisdiction of the Mississippi River Commission in the extension of the jurisdiction of the commission to certain tributaries of Mississippi River. Act of July 27, 1916 (39 Stat. 402).
Ohio Valley flood of March, 1913, relief of lessees of water power on Muskingum River, Ohio, whose property was destroyed by. *See* Corps of Engineers.
Oklawaha River, Fla.:
Transfer of title to the United States to the "Kyle and Young Canal" and the "Morrison Landing extension" of the same, etc. Act of July 27, 1916 (39 Stat. 396).
Canal to become a public waterway of the United States. Id.
Ordnance and ordnance stores:
Issue to the militia, credit to appropriation for. *See* Militia.
Replacing stores carried into war with Spain. *See* Militia.
Sale of rifles, etc., to Cuba. *See* Cuba.
Palace of fine arts, permit to Panama-Pacific International Exposition, and its successors in interest, to occupy portion of Presidio of San Francisco Military Reservation, Cal., with. Act of Aug. 29, 1916 (39 Stat. 637).
Extension of cession of jurisdiction to State of California over part so occupied during such occupancy, and to terminate on revocation of permit, etc. Id.
Failure to remove the buildings on revocation of the permit to vest title to them in the United States. Id. 638.
Panama Canal. *See also* Isthmian Canal Commission.
Acquisition of right of way from Republic of Colombia. Secs. 2 and 3, Act of June 28, 1902 (32 Stat. 481).
Advertising, unserviceable equipment, etc., may be sold without. Sec. 8, Act of Aug. 1, 1914 (38 Stat. 679).
Alternative route authorized. Sec. 4, Act of June 28, 1902 (32 Stat. 482).
American legation building at Panama, transfer of, without charge to jurisdiction of Secretary of State. Act of July 1, 1916 (39 Stat. 334).
Appropriation for property of canal company and for right of way. Sec. 3, Act of June 28, 1902 (32 Stat. 482).
Appropriations heretofore, herein, and hereafter made, with certain exceptions, to be paid from or reimbursed to the United States Treasury from proceeds of sales of bonds. Act of July 1, 1916 (39 Stat. 334).

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Panama Canal—Continued.
Appropriations. Sec. 5, Act of June 28, 1902 (32 Stat. 483).
for Construction available for payment of obligations of canal commission. Sec. 4, Act of May 27, 1908 (35 Stat. 387).
to Continue. Sec. 2, Act of Dec. 21, 1905 (34 Stat. 5).
Bonds—
on Circulating notes of national banks based on deposit of. Act of Dec. 21, 1905 (34 Stat. 5).
to Defray expenses, issue, interest, exemption from taxation. Sec. 8, Act of June 28, 1902 (32 Stat. 484); Act of Dec. 21, 1905 (34 Stat. 5); sec. 39, Act of Aug. 5, 1909 (36 Stat. 117).
Proceeds of sales of, available for reimbursement of Treasury for, or payment of expenditures from appropriations heretofore, herein, or hereafter made. Act of July 1, 1916 (39 Stat. 334).
Provisions against use as security for national-bank circulating notes. Act of Mar. 2, 1911 (36 Stat. 1013).
Reimbursement of expenditures from sale of. Act of Aug. 5, 1909 (36 Stat. 117); Act of Mar. 4, 1911 (36 Stat. 1450).
Rights and privileges of. Act of Dec. 21, 1905 (34 Stat. 5).
Building for Government exhibit on Presidio of San Francisco. *See* Panama-Pacific International Exposition.
Use of building at close of exposition. *See* Panama-Pacific International Exposition.
Canal Zone—
Automobiles, penalty for operating in violation of regulations for licensing and taxing. Sec. 5, Act of Aug. 21, 1916 (39 Stat. 528).
Breach of the peace, unlawful to commit a. Sec. 4, id.
Business or trade, penalty for conducting in violation of regulations relative to. Sec. 5, id.
Civil government of, general provisions. Sec. 7, Act of Aug. 24, 1912 (37 Stat. 564).
District courts established, rules, procedure. Sec. 8, id.
Governor, appointment of, Sec. 4, id.
United States citizens, magistrates, and constables. Sec. 7, id.
Consolidation of zone government, railroad, and canal funds. Sec. 1, Act of Aug. 1, 1914 (38 Stat. 679).
Consular officers of United States in foreign ports, powers of in respect to seamen conferred on shipping commissioner, etc. Sec. 9, Act of Aug. 21, 1916 (39 Stat. 529).
Customs duties, laws applicable to imports from. Act of Mar. 2, 1905 (33 Stat. 843).
Customs duties on imports from, reappropriated for construction. Sec. 5, Act of May 27, 1908 (35 Stat. 387).
Customs officers, fees of for certificates, etc., or notarial service. Sec. 8, Act of Aug. 21, 1916 (39 Stat. 528).
Deposit money orders, interest on payable from bank interest on money-order funds. Sec. 7, id.
Deposit money orders issued in lieu of postal savings certificates to bear interest. Sec. 6, id.
Disorderly, indecent, or immoral conduct, unlawful to engage in or permit. Sec. 4, id.
Docks, storehouses, etc., establishment of. Sec. 6, Act of Aug. 24, 1912 (37 Stat. 564).

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Panama Canal—Continued.
Canal Zone—Continued.
Extent of; acquirement of additional land. Act of Aug. 24, 1912 (37 Stat. 560).
Fees of customs officers for certificates or notarial service. Sec. 8, Act of Aug. 21, 1916 (39 Stat. 528).
Health regulations to be prescribed by President. Sec. 1, id. 527.
Immigration regulations as to persons entering or passing over. Sec. 10, id. 529.
Detention and return of persons entering in violation of regulations. Id.
Fine imposed on vessels for violation of regulations. Id.
Penalty for violation of regulations. Id.
Vessels required to return persons, withholding of clearance, etc. Id.
Immoral, indecent, or disorderly conduct, unlawful to engage in or permit. Sec. 4, id. 528.
Injury or obstruction to Panama Canal or locks. Sec. 10, id. 529.
Penalty for. Id.
Penalty for where act causes death of any person. Id.
Interest, deposit money orders issued in lieu of postal saving certificates to bear. Sec. 6, id. 528.
Interest on deposit money orders to be paid from bank interest on money order funds. Sec. 7, id.
Land survey of. Sec. 4, Act of Feb. 27, 1909 (35 Stat. 658).
Leases of public lands in. Secs. 1, 2, 3, id.
Naval radio stations, establishment of. Sec. 6, Act of Aug. 24, 1912 (37 Stat. 563).
Not embraced by term "United States" in immigration act. Sec. 33, Act of Feb. 20, 1907 (34 Stat. 908).
Notarial service, fees of customs officers for performing. Sec. 8, Act of Aug. 21, 1916 (39 Stat. 528).
Police power, rules and regulations for asserting and exercising. Sec. 4, Act of Aug. 21, 1916 (39 Stat. 528).
Police regulations, penalty for violating. Sec. 5, id.
Possession and occupation. Act of Apr. 28, 1904 (33 Stat. 429).
Postal savings certificates, deposit money orders issued in lieu of to bear interest. Sec. 6, Act of Aug. 21, 1916 (39 Stat. 528).
Postal service losses, payable from bank interest on money order funds. Sec. 7, id.
Quarantine regulations to be prescribed by President. Sec. 1, id. 527.
Penalty for violating. Id.
Revenues, distribution of. Sec. 2, Act of Aug. 1, 1914 (38 Stat. 678).
Right to remain in or pass over; regulated by governor. Sec. 10, Act of Aug. 24, 1912 (37 Stat. 564).
Roads and highways, regulations for use of. Sec. 3, Act of Aug. 21, 1916 (39 Stat. 528).
Automobile taxes may be graded according to value or power of machine. Id.
Licensing and taxing operation of self-propelled vehicles. Id.
Republic of Panama, mutual agreement with for reciprocal use of. Id.

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Panama Canal—Continued.
Canal Zone—Continued.
Roads and highways, regulations for use of—Continued.
Speed limit, signals, tags, license fees, etc., for self-propelled vehicles. Id.
Vehicles, self-propelled, regulations for operation of. Id.
Sanitary regulations to be prescribed by the President. Sec. 1, id. 527.
Penalty for violating. Id.
Seamen of vessels, powers of consular officers as to when on foreign voyages conferred on shipping commissioner, etc. Sec. 9, id. 529.
Shelter, temporary, of troops on. Use of portion of appropriation for acquisition of site and construction of supply depots at Fort Sam Houston, Tex., for providing. Act of Aug. 29, 1916 (39 Stat. 636).
No part of moneys so appropriated to be used for payment of commutation of fuel or quarters to officers or enlisted men. Id.
Shipping commissioner and deputy shipping commissioners, powers of United States consuls in foreign ports as to American seamen conferred on. Sec. 9, Act of Aug. 21, 1916 (39 Stat. 529).
Taxes, ad valorem, excise, license, and franchise. President to change regulations for levying, assessing, and collecting. Sec. 2, id, 528.
Ad valorem taxes, maximum rate of. Id.
Excise taxes, maximum rate of. Id.
Franchise taxes, maximum rate of. Id.
Taxes, penalty for conducting business, etc., in violation of regulations relative to. Sec. 5, id.
Temporary government. Sec. 2, Act of Apr. 28, 1904 (33 Stat. 429).
Vehicles, self-propelled, penalty for operation of in violation of regulations for licensing and taxing. Sec. 5, Act of Aug. 21, 1916 (39 Stat. 528).
Capacity. Sec. 3, Act of June 28, 1902 (32 Stat. 482).
Consolidation of Zone government, railroad, and canal funds. Sec. 1, Act of Aug. 1, 1914 (38 Stat. 679).
Contracts for. Sec. 5, Act of June 28, 1902 (32 Stat. 483); sec. 6, Act of Mar. 4, 1906 (34 Stat. 1370); Act of Aug. 5, 1909 (36 Stat. 130).
Costa Rica and Nicaragua; concessions to be obtained from. Sec. 4, Act of June 28, 1902 (32 Stat. 482).
Deduction from pay for amounts due from employees. Sec. 8, Act of Mar. 4, 1907 (34 Stat. 1371).
Defense, etc. Sec. 3, Act of June 28, 1902 (32 Stat. 482).
Employees, number and compensation not to be increased above the provision for in annual Book of Estimates except in cases of emergency and other specified exceptions noted in the provision. Act of July 1, 1916 (39 Stat. 334).
Employment of persons for; compensation. Sec. 3, Act of June 28, 1902 (32 Stat. 482).
Estimates, detailed to be submitted hereafter. Sec. 6, Act of Aug. 1, 1914 (38 Stat. 679).
Estimates, number and compensation of employees not to be increased above provision for in Annual Book of, except in cases of emergency and other specified exceptions. Act of July 1, 1916 (39 Stat. 334).
Foreign officials, entertainment of in connection with Panama-Pacific International Exhibition. *See* Panama-Pacific International Exhibition.

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Panama Canal—Continued.
Guaranty of use of canal and harbors to country ceding rights. Sec. 6, Act of June 28, 1902 (32 Stat. 483).
Harbors. Sec. 3, Act of June 28, 1902 (32 Stat. 482).
Injuries to, punishment. Sec. 10, Act of Aug. 24, 1912 (37 Stat. 564).
Isthmian Canal Commission, duties, etc., of. *See* Corps of Engineers.
Joint land commission shall not have jurisdiction over any claim arising under any lease or contract for occupancy heretofore or hereafter made by the Panama Railroad Co. of land or property owned by it. Sec. 2, Act of July 1, 1916 (39 Stat. 336).
Leaves of absence to employees. Act of Feb. 24, 1909 (35 Stat. 645).
Liability of common carriers for injuries to employees. Secs. 2 to 8, Act of Apr. 22, 1908 (35 Stat. 65).
Lock canal to be constructed. Act of June 29, 1906 (34 Stat. 611).
Material and equipment for, domestic manufacture. Joint Res. No. 35, June 25, 1906 (34 Stat. 835).
Moneys received from services, supplies, etc., disposition of. Sec. 3, Act of Aug. 1, 1914 (38 Stat. 678).
Navy, steamships *Ancon* and *Cristobal*, not to be transferred to. Act of July 1, 1916 (39 Stat. 334).
New Panama Canal Co., purchase of lands and rights from, authorized. Act of June 28, 1902 (32 Stat. 481).
Nicaragua Canal, as alternative route, authorized. Sec. 4, Act of June 28, 1902 (32 Stat. 482).
"Panama Canal act." Act of Aug. 24, 1912 (37 Stat. 560).
Panama, payment to. Act of Apr. 28, 1904 (33 Stat. 429).
Panama Railway Co., purchase of capital stock of. Act of June 28, 1902 (32 Stat. 481).
Contracts with Army and Navy; form, duration, bond. Sec. 6, Act of Mar. 4, 1911 (36 Stat. 1452).
Insurance, payment of notes. Sec. 2, act of Mar. 4, 1911 (36 Stat. 1451).
Joint land commission shall not have jurisdiction over any claim arising under any lease or contract for occupancy heretofore or hereafter made by the Panama Railroad Co. of land or property owned by it. Sec. 2, Act of July 1, 1916 (39 Stat. 336).
Payment of annual subsidy not required. Act of June 25, 1910 (36 Stat. 772).
Provisions relating to construction of canal works, etc., not applicable to. Sec. 6, Act of Mar. 3, 1909 (35 Stat. 818).
Public property, unserviceable equipment, etc., may be sold without advertising. Sec. 8, Act of Aug. 1, 1914 (38 Stat. 679).
Purchase of rights, etc., of New Panama Canal Co. Act of June 28, 1902 (32 Stat. 481).
Registry American ships, general provisions. Sec. 5, Act of Aug. 24, 1912 (37 Stat. 562).
Reports as to construction, accounts of receipts, etc. Sec. 3, Act of Dec. 21, 1905 (34 Stat. 5).
Republic of Colombia, right of way from. Secs. 2 and 3. Act of June 28, 1902 (32 Stat. 481).
Revenues, distribution of. Sec. 2, Act of Aug. 1, 1914 (38 Stat. 678).
Sales of construction material, etc., disposition of receipts from. Sec. 3, Act of Aug. 1, 1914 (38 Stat. 678).

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Panama Canal—Continued.
Steamships *Ancon* and *Cristobal* not to be transferred to the Secretary of Navy, as provided for in Act of May 27, 1908. Act of July 1, 1916 (39 Stat. 334).
Tolls, basis of. Sec. 5, Act of Aug. 24, 1912 (37 Stat. 562).
Basis of. Minimum modified. Sec. 2, Act of June 15, 1914 (38 Stat. 386.)
Exemption of coastwise vessels repealed. Sec. 1, Act of June 15, 1914 (38 Stat. 385).
President to prescribe changes in. Sec. 5, Act of Aug 24, 1912 (37 Stat. 562).
Unit cost of construction work. Sec. 8, Act of Aug. 1, 1914 (38 Stat. 679).
Unserviceable equipment, etc., may be sold without advertising. Sec. 8, Act of Aug. 1, 1914 (38 Stat. 679).
Panama-California Exposition, detail of Army officer, on active or retired list, with. *See* Details of Army officers.
Panama-California Exposition, transfer of Government exhibit from the Panama-Pacific International Exposition to, making available unexpended part of appropriation for, and the law constituting a Government exhibit board, authorizing detail of civilians and Army and Navy officers, etc. J. Res. No. —, of Dec. 17, 1915 (39 Stat. 2).
Panama-California International Exposition, transfer of Government exhibit at close of to the Mississippi Centennial Exposition at Gulfport, Miss. Sec. 1, J. Res. No. — of Sept. 8, 1916 (39 Stat. 854).
Government exhibit board authorized to repair and rearrange Government exhibit before transferring it to the Mississippi Centennial Exposition. Sec. 3, Id. 855.
Laws or parts of laws relating to the Government exhibit, a Government exhibit board, including detail of civilians and Army and Navy officers, continued and made applicable to the Mississippi Centennial Expostion, Sec. 2, id. 854.
United States not responsible for any bond, debt, contract, etc., in connection with or growing out of said exposition. Id. 855.
Panama-Pacific International Exposition:
Building for Government exhibit. Act of Aug. 1, 1914 (38 Stat. 667).
Cession of jurisdiction to State of California over portions of the Presidio of San Francisco and Fort Mason Military Reservations used for exposition purposes during such occupancy. J. Res. No. 53 of Oct. 22, 1914 (38 Stat. 783).
Construction of, on Presidio of San Francisco Military Reservation. Act of Aug. 1, 1914 (38 Stat. 667).
Detail of Army officer, on active or retired list, with. *See* Details of Army officers.
Details of Army and Navy officers with, permitted, allowances in lieu of transportation and mileage, etc. Act of June 23, 1913 (38 Stat. 76).
Entertaining foreign officials, etc., at. Act of Aug. 1, 1914 (38 Stat. 667).
Palace of Fine Arts, company or its successors in interest, authorized to occupy portion of Presidio of San Francisco Military Reservation, Cal., with. Act of Aug. 29, 1916 (39 Stat. 637).
Extension of cession of jurisdiction to State of California over part to be so occupied during such occupancy, and to terminate on revocation of the permit, etc. Id.
Failure to remove the buildings on revocation of the permit to vest title to them in the United States. Id. 638.
Use of building at close of exposition. Act. of Aug. 1, 1914 (38 Stat. 667).

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Panama Railroad. consolidation of the Zone Government, canal fund, and. *See* Panama Canal.
Panama Railway Company, purchase of capital stock of. *See* Panama Canal.
Panama, Republic of, payment to. *See* Panama Canal.
Pan American Exposition. *See* Texas Bicentennial and.
Park system, District of Columbia:
Filled-in canal spaces, etc., added to. *See* Corps of Engineers.
Potomac Park made part of. *See* Corps of Engineers.
Parole of military prisoners. *See* Federal prisoners.
Parole of United States prisoners, Federal parole law. Act of June 25, 1910 (36 Stat. 819), as amended by Act Jan. 23, 1913 (37 Stat. 650).
Pay Department, appointments in, from volunteers. Act of Mar. 2, 1901 (31 Stat. 900).
Peace officers, Philippine Islands, Army officers as attorneys and. *See* Philippine Islands.
Penitentiary, persons convicted in courts of District of Columbia and sentenced to confinement for more than one year may be confined in District Reformatory instead of. Act of Sept. 1, 1916 (39 Stat. 711).
Pensions:
Abandonment of children or immoral conduct by widow forfeits. Sec. 4706, R. S.
Accrued. Sec. 4710, R. S.
Accrued. Act of June 3, 1884 (23 Stat. 35); and act of Mar. 1, 1889 (25 Stat. 782).
Affidavits, false or post-dated vouchers, penalty. Sec. 4746, R. S.
Agencies in three groups. Sec. 2, Act of Mar. 3, 1891 (26 Stat. 1082).
Agents, appointment and term of office. Sec. 4778, R. S.
Agents, bonds. Sec. 108, Act of Mar. 4, 1909, Criminal Code (35 Stat. 1107).
Army nurses. Act of Aug. 5, 1892 (27 Stat. 348).
Arrears, commencement. Sec. 1, Act of Jan. 25, 1879 (20 Stat. 265).
Arrears, payment. Sec. 4711, R. S.
Assignment, pledge or transfer void. Sec. 4745, R. S.
Attachment, not liable to. Sec. 4747, R. S.
Attorneys' fees. Sec. 3, Act of July 4, 1884 (23 Stat. 99); sec. 4, Act of June 27, 1890 (26 Stat. 183); Act of May 28, 1908 (35 Stat. 419); sec. 3, Act of Apr. 19, 1908 (35 Stat. 64).
Amounts to be filed. Sec. 4, Act of July 4, 1884 (23 Stat. 99).
Deducted by agent. Sec. 4769, R. S.
Certain pensions equalized. Act of June 6, 1874 (18 Stat. 61).
Certificate and attorneys' fees. Sec. 4768, R. S.
Certificate of official character of officers without seal. Joint Res. No. 43, Sept. 1, 1890 (26 Stat. 679).
Check to order of each pensioner. Sec. 4765, R. S.
Children, legitimate. Sec. 4704, R. S.
Citizenship. Act of Feb. 3, 1892 (27 Stat. 429).
Civil examining surgeons. Sec. 4777, R. S., as amended by Act of May 28, 1908 (35 Stat. 419).
Civil service. Act of Mar. 1, 1879 (20 Stat. 327); Act of June 6, 1866 (14 Stat. 57); Act of Mar. 4, 1909 (35 Stat. 1058).
Claimant may inspect surgeon's report. Act of July 18, 1894 (28 Stat. 113), as amended by Act of May 28, 1908 (35 Stat. 419).
Claims exempt from revenue stamps. Act of June 13, 1898 (30 Stat. 462).

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Claims, removal of limitations of prosecution. Sec. 3, Act of Jan. 25, 1879 (20 Stat. 265).

Commencement. Act of Mar. 6, 1896 (29 Stat. 45); sec. 1, Act of July 1, 1902 (32 Stat. 750).

Commencement in wars prior to Mar. 4, 1861. Sec. 4713, R. S.

Commissioner. Sec. 470, R. S.

Duties. Sec. 471, R. S.

Assistant. Sec. 472, R. S.

Continuance. Sec. 4733, R. S.

Deafness, increase of rate. Act of Aug. 27, 1888 (25 Stat. 449).

Death of pensioner. Sec. 4765, R. S.

Death, proof of. Act of Mar. 13, 1896 (29 Stat. 57).

Declarations in foreign countries. Sec. 2, Act of July 26, 1892 (27 Stat. 272).

Declarations. Sec. 1, Act of July 26, 1892 (27 Stat. 272).

Dependent parents. Sec. 1, Act of June 27, 1890 (26 Stat. 182).

Deserters, not so deemed. Sec. 4749, R. S., as amended by Joint Res. of June 28, 1906 (34 Stat. 836).

Disloyalty a bar to. Sec. 4716, R. S., as amended by sec 5, Act of Jan. 29, 1887 (24 Stat. 371), and sec. 6, Act of July 27, 1892 (27 Stat. 281); amended by sec 1, Act of July 1, 1902 (32 Stat. 750).

Disloyalty removed in certain cases. Acts of Aug. 1, 1892 (27 Stat. 340), and Apr. 18, 1900 (31 Stat. 136); also Act of Mar. 3, 1899 (30 Stat. 1379).

Repealed (sec. 4716, R. S.). Act of Aug. 29, 1916 (39 Stat. 649).

Embezzlement by guardian. Secs. 4783, 5486, R. S.; Act of Feb. 10, 1891 (26 Stat. 746).

Examination fees. Act of Apr. 4, 1900 (31 Stat. 61); replaced by Act of May 28, 1908 (35 Stat. 419).

Expert surgeons. Act of July 25, 1882 (22 Stat. 176).

False affidavit. Sec. 4746, R. S.

Fees for increase, $2. Act of Mar. 3, 1891 (26 Stat. 1082).

None in arrears. Sec. 4, act of July 4, 1884 (23 Stat. 99).

no Fee to agent, etc. Sec. 2, Act of Aug. 5, 1892 (27 Stat. 348).

Hands, loss of both, increase. Act of Feb. 12, 1889 (25 Stat. 659).

Increase of. Act of June 16, 1880 (21 Stat. 281).

Increase for loss of limbs. Act of Aug. 4, 1886 (24 Stat. 220), amended by Act of Mar. 2, 1903 (32 Stat. 944).

Increase not to commence prior to date of surgeon's certificate. Sec. 4698½, R. S.

Increase of rate. Act of June 18, 1874 (18 Stat. 78).

Indian wars prior to 1842. Act of July 27, 1892 (27 Stat. 281); Act of June 27, 1902 (32 Stat. 399); Act of May 30, 1908 (35 Stat. 553).

Indian wars, survivors of certain, from January 1, 1859, to January, 1891. Secs. 1–3, Act of Mar. 4, 1917 (Pub. No. 400, 39 Stat. —).

Inmates, National Homes for Disabled Volunteer Soldiers, how paid. *See* National Homes for Disabled Volunteer Soldiers.

Inspection of agencies. Act of Aug. 8, 1882 (22 Stat. 373).

Instructions free of charge. Sec. 4748, R. S.

Invalid, dependent soldiers. Sec. 2, Act of May 9, 1900 (31 Stat. 170); Act of Feb. 6, 1907 (34 Stat. 897); Act of Mar. 4, 1907 (34 Stat. 1406).

Investigation of fraud. Sec. 474, R. S.

Investigating officers may administer oaths. Sec. 3, Act of Mar. 3, 1891 (26 Stat. 1083).

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Pensions—Continued.
Legal disabilities. Sec. 4766, R. S.
Loss of arm at shoulder joint. Act of Mar. 3, 1885 (23 Stat. 457).
Loss of both hands, feet, or eyes. Act of June 17, 1878 (20 Stat. 144); amended by Act of April 8, 1904 (33 Stat. 163).
Loss of leg at hip joint. Act of Mar. 3, 1879 (20 Stat. 483).
Loyalty—
Provisions of sec. 4716, R. S., not applicable to survivors of certain Indian wars. Sec. 3, Act of Mar. 4, 1917 (Pub. No. 400, 39 Stat. —).
Repealed. Sec. 4617, R. S. Act of Aug. 29, 1916 (39 Stat. 649).
Marriage, proof of. Act of Aug. 7, 1882 (22 Stat. 345).
Marriage must be proven legal. Sec. 2, Act of Aug. 7, 1882 (22 Stat. 345).
Medical referee and examining surgeon. Sec. 4776, R. S.
Mexican War, increased to $12 per month. Act of Jan. 5, 1893 (27 Stat. 413).
Mexican War. Sec. 4730, R. S.
Minimum rate, $6 per month. Act of Mar. 3, 1895 (28 Stat. 704).
Missouri Militia. J. Res. No. 13, Feb. 15, 1895 (28 Stat. 970).
Not to be withheld. Sec. 4734, R. S.
Oaths, before authorized officers. Act of July 1, 1890 (26 Stat. 209).
Oaths by officers, fee. Act of June 7, 1888 (25 Stat. 174); Act of Mar. 1, 1889 (25 Stat. 782); and Act of Mar. 23, 1896 (29 Stat. 74).
One at a time. Sec. 4715, R. S.
Pay and, not allowed persons in Army, Navy, or Marine Corps, unless, etc. Sec. 4724, R. S.
Payment by check. Act of June 30, 1890 (26 Stat. 187).
Payments by attorneys to pensioners in foreign countries prohibited. Act of Mar. 14, 1898 (30 Stat. 276).
for Permanent specific disability prior to June 4, 1872. Sec. 4697, R. S.
Persons receiving special pension not to receive any other relief. Sec. 5, Act July 25, 1882 (22 Stat. 176); Act of Mar. 4, 1909 (35 Stat. 1058).
Postmasters, fourth class, may administer oaths. Act of Aug. 23, 1894 (28 Stat. 499).
Presumption as to disability at enlistment. Act of Mar. 3, 1885 (23 Stat. 361).
Rate for dependent widow and minor children. Sec. 3, Act of May 9, 1900 (31 Stat. 171); amended by sec. 2, Act of Apr. 19, 1908 (35 Stat. 64).
Rate increased to $12 per month to all survivors. Act of Apr. 23, 1900 (31 Stat. 137); Act of Mar. 3, 1903 (32 Stat. 1228).
Rate of arrears. Act of Mar. 3, 1879 (20 Stat. 470).
Sixty days service in Mexican War or personally named by Congress for specific service in that war. Act of Jan. 29, 1887 (24 Stat. 371).
Special examinations. Sec. 3, Act of June 21, 1879 (21 Stat. 30).
Special investigation of fraud. Sec. 4744, R. S.
Surgeons, appointment. Sec. 4, Act of July 4, 1882 (22 Stat. 175).
Surgeons reports. Act of Dec. 22, 1896 (29 Stat. 479); amended by Act of May 28, 1908 (35 Stat. 419).
Suspension of, notice. Act of Dec. 21, 1893 (28 Stat. 18).
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Certain classes of persons barred from election or appointment to township office. Sec. 15, Act No. 1397, Philippine Commission, Sept. 14, 1905.

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Civil and military officers and employees traveling on leave to be granted half rates by contracting vessels of coastwise trade. Sec. 1, Act No. 1310, Philippine Commission, Mar. 23, 1905.

Civil government not to interfere with military administration of lands reserved for military purposes. Sec. 3, Act No. 530, Philippine Commission, Nov. 24, 1902.

Civil jurisdiction over reservations. Sec. 8, Act No. 530, Philippine Commission, Nov. 24, 1902.

Claims for private lands and interests within military reservations to be barred if not presented within six months from date of notice. Sec. 4, Act No. 627, Philippine Commission, Feb. 9, 1903; sec. 1, Act No. 806, Philippine Commission, July 24, 1903.

Commanding officer of United States troops at each place named in Act to notify municipal authorities of bounds of precincts within which intoxicants may not be sold. Sec. 5, Act No. 709, Philippine Commission, Mar. 28, 1903.

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Criminal prosecutions to be instituted under liquor act for violations of same. Sec. 25, Act No. 59, Philippine Commission, Dec. 14, 1900.

Debt due United States from any insular, provincial, or municipal government officer or employee to be withheld from latter's pay by disbursing officer. Sec. 1, Act No. 911, Philippine Commission, Sept. 29, 1903.

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Disinterment and removal of dead. Sec. 35, Act No. 1458, Philippine Commission, Feb. 21, 1906.

Electors, who may exercise privilege of choosing elective officers; officers and enlisted men of Army, Navy, or Marine Corps barred. Sec. 6, Act No. 1397, Philippine Commission, Sept. 14, 1905.

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Fees and fine arising in enforcement of liquor law; how disposed of. Sec. 4, Act No. 759, Philippine Commission, Mar. 28, 1903; sec. 1, Act No. 1502, Philippine Commission, June 26, 1906.

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Fees to civilian witnesses. Sec. 1, Act No. 1130, Philippine Commission, Apr. 28, 1904; sec. 1, Act No. 1243, Philippine Commission, Oct. 7, 1904.

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Firearms and ammunition regularly and lawfully issued to all United States officers, soldiers, sailors and marines, constabularly, prison guards, policemen, and provincial officials and servants, to be retained by them for official use. Sec. 16, Act No. 1780, Philippine Commission, Oct. 12, 1907. Sec. 24, Act No. 175, Philippine Commission, July 18, 1901, as amended by Act No. 610, Philippine Commission, Feb. 2, 1903, and sec. 1, Act No. 652, Philippine Commission, Mar. 4, 1903, are repealed by sec. 31, Act No. 1780, Philippine Commission.

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Franchises for works of public utility, etc., rules and regulations to be adopted. Sec. 74, Act of July 1, 1902 (32 Stat. 691).

Governor general to notify judge of Court of Land Registration of reservation of public lands for military purposes. Sec. 2, Act No. 627, Philippine Commission Feb. 9, 1903, as amended by sec. 1, Act No. 806, Philippine Commission, July 24, 1903.

Governor of Province, or district governor, to apply to any military officer in command of United States troops to enforce law and order and suppress disturbances that can not otherwise be put down. Sec. 20, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 11, Act No. 1283, Philippine Commission, Jan. 13, 1905.

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Repeal of section of Act to forbid issuing of writ of habeas corpus against military officer or soldier in certain Provinces. Sec. 4, Act No. 421, Philippine Commission, June 23, 1902.

When privilege of same may be suspended. Sec. 5, Act of July 1, 1902 (32 Stat. 692).

Highway, Lepanto Mining Co., statutory regulations governing operation of same. Sec. 5, Act No. 1700, Philippine Commission, Aug. 30, 1907.

Import duties, not to be imposed on certain classes of imports. Sec. 10, Act of Aug. 5, 1909 (36 Stat. 170, 171).

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Interisland traffic, regulations governing. Sec. 1, Act of Apr. 29, 1908 (35 Stat. 70).

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Intoxicating liquors, certain Army officers to be justices of the peace only for purpose of enforcing provisions of Act regulating sale of. Sec. 4, Act No. 709, Philippine Commission, Mar. 28, 1903, as amended by sec. 1, Act No. 1502, Philippine Commission, June 26, 1906.

Investigation of suspicious deaths. Sec. 15, Act No. 1487, Philippine Commission, May 16, 1906.

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Justices of the peace, certain Army officers to be, only for purpose of enforcing act regulating sale of intoxicating liquors. Sec. 4, Act No. 709, Philippine Commission, Mar. 28, 1903, as amended by sec. 1, Act No. 1502, Philippine Commission, June 26, 1906.
Lands and buildings exempt from taxation. Sec. 19, Act No. 1396, Philippine Commission, Sept. 14, 1905.
Lands comprised within military reservations to become registered lands. Sec. 1, Act No. 627, Philippine Commission, Feb. 9, 1903, as amended by sec. 1, Act No. 806, Philippine Commisson, July 24, 1903.
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Lands within military reservations to be brought under operation of land registration Act. Sec. 1, Act No. 627, Philippine Commission, Feb. 9, 1903, as amended by sec. 1, Act No. 806, Philippine Commission, July 24, 1903.
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Licenses to harbor vessels. Sec. 4, Act of Apr. 29. 1908 (35 Stat. 70).
Liquor licenses not to be granted on military reservations. Sec. 1, Act No. 580, Philippine Commission, Nov. 24, 1902.
Liquor licenses not to be granted by provincial or municipal authority for sale of intoxicants within certain prohibited areas. Sec. 1, Act No. 709, Philippine Commission, Mar. 28, 1903, as amended by sec. 1, Act No. 760, Philippine Commission, May 21, 1903; *see* secs. 1 and 2, Act No. 1169, Philippine Commission, May 31, 1904, and sec. 1, Act No. 1904, Philippine Legislature, May 19, 1909.
Locust pest, exemption of certain named classes of inhabitants of Philippine Islands from being called upon to aid in suppression of. Sec. 1, Act No. 834, Philippine Commission, Aug. 17, 1903.
Military forces in Philippine Islands to be at all times subject to call of civil authorities. Sec. 1, Act of July 1, 1902 (32 Stat. 691).
Military reservations, civil officers having authority over, or civilians resident thereon, not to interfere with military use of same. Sec. 3, Act No. 580, Philippine Commission, Nov. 24, 1902.
Mining claims on reservations. Sec. 5, Act No. 580, Philippine Commission, Nov. 24, 1902.
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Allowance to Army officers detailed to perform duties of provincial or district officials of Province. Sec. 11, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 4, Act No. 1283, Philippine Commission, Jan. 13, 1905, and sec. 1, Act No. 1391, Philippine Commission, Sept. 8, 1905.
Composition of legislative council. Sec. 12, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 5, Act No. 1283, Philippine Commission, Jan. 13, 1905, and sec. 2, Act No. 1673, Philippine Commission, July 20, 1907.
Governor General to appoint executive officers for. Sec. 4, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 1, Act No. 1283, Philippine Commission, Jan. 13, 1905, and sec. 1, Act No. 1673, Philippine Commission, July 20, 1907.

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Legislative council to have power to insure gradual transition from military to civil control. Sec. 28, Act No. 787, Philippine Commission, June 1, 1903.
Positions, duties, and compensation of engineer and superintendent of schools of Moro Province created, assigned, and fixed by legislative council. Sec. 12, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 5, Act No. 1283, Philippine Commission, Jan. 13, 1905, and sec. 2, Act No. 1673, Philippine Commission, July 20, 1907.
Provincial governor to appoint, with consent of legislative council, a governor and secretary in each district. Sec. 15, Act No. 787, Philippine Commission, July 1, 1903, as amended by sec. 1, Act No. 889, Philippine Commission, Sept. 17, 1903; sec. 1, Act No. 1631, Philippine Commission, Apr. 25, 1907; and sec. 3, Act No. 1879, Philippine Commission, Oct. 10, 1908.
Provincial governor to report to the Governor General of the Islands. Sec. 5, Act No. 787, Philippine Commission, June 1, 1903.
Salaries of all officers and employees of Province, and of districts and municipalities therein, from what payable. Sec. 11, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 4, Act No. 1283, Philippine Commission, Jan. 13, 1905, and sec. 1, Act No. 1391, Philippine Commission, Sept. 8, 1905.
Use of Army in aid of civil authorities. Sec. 20, Act No. 787, Philippine Commission, June 1, 1903, as amended by sec. 11, Act No. 1283, Philippine Commission, Jan. 13, 1905.
National-defense secrets, offenses against act, where cognizable. Sec. 3, Act of Mar. 3, 1911 (36 Stat. 1085).
Native wines not to be sold in Province of Zambales to soldiers of Army or sailors or enlisted men of Navy or Marine Corps; penalty for violation. Secs. 1 and 2, Act No. 1369, Philippine Commission, July 7, 1905.
Native wines not to be sold to soldiers of United States Army or to sailors or enlisted men of Navy or Marine Corps in Province of Cavite; penalty for violation. Secs. 1 and 2, Act No. 1302, Philippine Commission, Feb. 24, 1905.
Native wines or liquors, Governor General to specify kinds of, prohibited to be sold. Sec. 1, Act No. 1944, Philippine Legislature, May 20, 1909.
Native wines, so called, not to be sold to soldiers. Sec. 24, Act No. 59, Philippine Commission, Dec. 14, 1900.
Navigation laws, repeal of. Sec. 6, Act of Apr. 29, 1908 (35 Stat. 70).
Navigation laws to be administered by proper officials of the Insular Government. Sec. 5, Act of Apr. 29, 1908 (35 Stat. 70).
Oaths, who may administer. Sec. 1, Act No. 1562, Philippine Commission, Nov. 10, 1906.
Offenses on high seas, jurisdiction over. Sec. 3, Act of Mar. 3, 1911 (36 Stat. 1085).
Officers of Army and of constabulary are, while upon certain details, given the power of peace officers, and, while so detailed, shall perform the duties of such peace officers. Sec. 1, Act No. 1797, Philippine Commission, Oct. 12, 1907.
Penalty for conviction of violation of liquor law. Sec. 25, Act No. 59, Philippine Commission, Dec. 14, 1900.
Penalty for selling, furnishing, or giving away intoxicants. Sec. 2, Act No. 709, Philippine Commission, Mar. 28, 1903.

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Penalty for unlawfully cutting or destroying standing timber or any other public property on military reservations. Sec. 6, Act No. 530, Philippine Commission, Nov. 24, 1902. See sec. 9, Act No. 1407, Philippine Commission, Oct. 26, 1905, as amended by sec 1, Act No. 1872, Philippine Commission, June 19, 1908, and sec. 1, Act No. 1976, Philippine Legislature, Apr. 18, 1910, which gives to honorably discharged soldiers and sailors of the Army or Navy certain rights to cut timber free of charge in the public forests.

Penalty for violating any regulation made in pursuance of an Act providing for establishment and maintenance of toll roads and bridges; act to be at once operative. Secs. 2 and 8, Act No. 1959, Philippine Commission, June 26, 1909.

Per diems to Army or Navy officers detailed for duty with the Insular Government when traveling on official business. Sec. 3, Act No. 1873, Philippine Legislature, June 19, 1908.

Personal property of persons employed in military service and used incident to such service to be exempt from all taxation under insular laws. Sec. 4, Act No. 530, Philippine Commission, Nov. 24, 1902.

Philippine civil-service act not to apply to persons in military, naval, or civil service of United States detailed for performance of civil duties. Sec. 1, Act No. 1698, Philippine Commission, Aug. 26, 1907.

Philippine civil-service Act retroactive in effect as to accrued leave of officers and employees. Sec. 23, Act No. 1698, Philippine Commission, Aug. 26, 1907.

Philippine civil-service act to apply to appointment to all positions in Philippine civil-service, except semi or unskilled laborers, etc. Sec. 1, Act No. 1698, Philippine Commission, Aug. 26, 1907.

Poll tax, every male between 18 and 60, with certain named exceptions, to pay. Sec. 120, Act No. 1189, Philippine Commission, July 2, 1904.

Procedure to be observed upon filing of claims and applications for registration in court of land registration. Sec. 5, Act No. 627, Philippine Commission, Feb. 9, 1903, as amended by sec. 1, Act No. 806, Philippine Commission, July 24, 1903.

Property and rights acquired by treaty, except military reservations, placed under control of insular government. Sec. 12, Act of July 1, 1902 (32 Stat. 691).

Property and rights acquired by treaty, except that designated for military and other reservations placed under control of insular government. Sec. 12, Act of July 1, 1902 (32 Stat. 695.)

Publication, by court of land registration, of notices of registration of public lands. Sec. 8, Act No. 627, Philippine Commission, Feb. 9, 1903, as amended by sec. 1, Act No. 806, Philippine Commission, July 24, 1903.

Railway line to Baguio, statutory regulations governing operation of same. Sec. 1, Act No. 1735, Philippine Commission, Oct. 2, 1907.

Railway, telegraph, and telephone lines, statutory regulations governing construction and operation of, in islands of Panay, Negros, and Cebu. Secs. 1 and 15, Act No. 1497, Philippine Commission, May 28, 1906.

Railways in island of Luzon, statutory regulations governing operation of same. Sec. 1, Act No. 1510, Philippine Commission, July 7, 1906.

Restrictive provisions of law not to apply to foreign vessels plying between Philippines and United States. Sec. 3, Act of Apr. 29, 1908 (35 Stat. 70).

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Philippine Islands—Continued.
Revised Statutes of United States, secs. 1014, 5270–5279, to apply, so far as applicable, to Philippine Islands. Secs. 1 and 2, act of Feb. 9, 1903 (32 Stat. 805); secs. 1 and 2, Act of Feb. 6, 1905 (33 Stat. 698).
Road tax to be imposed on all males, with certain exceptions, between 18 and 60 years of age. Sec. 19, Act No. 1396, Philippine Commission, Sept. 14, 1905.
Salary of Army or Navy officer detailed to perform the duties of any office under insular government. Sec. 39, Act No. 1407, Philippine Commission, Oct. 26, 1905.
Saline lands, disposition of. Sec. 9, Act of Feb. 6, 1905 (33 Stat. 697).
Sec. 1014, Revised Statutes, to apply, so far as practicable, throughout the Philippine Islands. Sec. 1, Act of Feb. 9, 1903 (32 Stat. 806).
Secs. 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277, Revised Statutes, so far as applicable, to apply to Philippine Islands. Secs. 1 and 2, Act of Feb. 6, 1905 (33 Stat. 698).
Secs. 5278 and 5279, Revised Statutes, to apply, so far as practicable, to the Philippine Islands. Sec. 2, Act of Feb. 9, 1903 (32 Stat. 807).
Secretary of commerce and police to invite proposals and make contracts for carrying mails and government freight and passengers in coastwise trade. Sec. 1, Act No. 1310, Philippine Commission, Mar. 23, 1905.
Special transportation to be furnished insular government by Manila Railway Co. at extra compensation. Sec. 14, Act No. 554, Philippine Commission, Dec. 8, 1902.
Special transportation to be furnished insular government by steam tramway contractor at extra compensation. Sec. 16, Act No. 1448, Philippine Commission, Feb. 1, 1906.
Statutory provisions governing appointments to all positions and employments in Philippine civil service. Sec. 1, Act No. 1698, Philippine Commission, Aug. 26, 1907.
The President, during period of armed resistance to United States forces, to continue to regulate and control commercial intercourse of Philippine Islands. Sec. 3, Act of July 1, 1902 (32 Stat. 692).
Toll roads and bridges, rates fixed to be subject to approval of Governor General; officers, enlisted men, and civil employees of Army, Navy, and Marine Corps to be exempt from payment of tolls. Sec. 1, Act No. 1617, Philippine Commission, Mar. 20, 1907.
Tonnage taxes imposed by Philippine Legislature on vessels engaged in foreign trade legalized and ratified. Act of July 1, 1916 (39 Stat. 286).
Tonnage taxes and light dues, vessels owned by citizens of Philippine Islands exempt from, in ports of United States. Act of July 1, 1916 (39 Stat. 286).
Tonnage taxes to be levied upon all foreign vessels entering United States from Philippine Islands. Sec. 2, Act of Apr. 29, 1908 (35 Stat. 70).
Transportation of bodies by military authorities. Par. 289, Revised Ordinances of City of Manila, 1908.

Police: Civil, may be called upon to arrest trespassers, etc., upon Presidio of San Francisco. Act of June 4, 1888 (25 Stat. 167).

Poll tax, Philippine Islands, male persons subject to. *See* Philippine Islands.

"Portage Levee," Secretary of War to convey title of United States in, to the State of Wisconsin or city of Portage. Act of July 27, 1916 (39 Stat. 401).

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Porto Rico:
Civil government provided for. Secs. 1–58, Act of Mar. 2, 1917 (39 Stat. —).
"Person," as used in Act, how construed. Sec. 2, Act of June 11, 1906 (34 Stat. 234).
Postponement of election to a date to be hereafter fixed by the President on failure of Congress to pass the Act to provide a civil government for, etc., at 1st sess., 64th Cong. Sec. 6, Act of Sept. 8, 1916 (39 Stat. 830).
Restrictions upon powers granted by Act to Secretary of War. Sec. 3, Act of June 11, 1906 (34 Stat. 235).
Secretary of War is authorized to grant permits for construction of works in navigable waters in or surrounding Porto Rico. Sec. 1, Act of June 11, 1906 (34 Stat. 234).
Postmasters, oaths, may administer for pension purposes. *See* Pensions.
Post traders: Vacancies not to be filled. Act of Jan. 28, 1893 (27 Stat. 426).
Potomac Park, District of Columbia:
Made part of park system. *See* Corps of Engineers.
Restrictions on lagoons or speedways in. *See* Corps of Engineers.
Playground for children, regulations for control of, etc. *See* Corps of Engineers.
President:
Authorized to employ all persons in land and naval service in connection with Coast and Geodetic Survey work. *See* Army.
Philippine Islands, during armed resistance to regulate commercial intercourse with. *See* Philippine Islands.
Powers conferred on, may be exercised through Isthmian Canal Commission. *See* Isthmian Canal Commission.
Presidio of San Francisco Military Reservation:
Consent of United States to the closing of certain public streets of the city of San Francisco east of the eastern boundary of, and their utilization as site for a State normal school, etc. Act of Aug. 29, 1916 (39 Stat. 637).
Construction of building on for Government exhibit and use of building after close of exhibition. *See* Panama-Pacific International Exposition.
Construction of road across connecting Fort Winfield Scott with city and county road leading to Fort Miley. Act of Aug. 29, 1916 (39 Stat. 637).
Panama-Pacific International Exposition and its successors in interest may be authorized to occupy portion of with Palace of Fine Arts. Id.
Extension of cession of jurisdiction to State of California over part to be occupied during such occupancy, and to terminate on revocation of the permit, etc. Id.
Failure to remove the buildings on revocation of the permit to vest title to them in the United States. Id. 638.
Temporary cession of jurisdiction to State of California over portion used for exposition purposes. *See* Panama-Pacific International Exposition.
Prisoners, Federal:
Deduction from sentences for good conduct. Secs. 5543, 5544, R. S., as amended by Act of Mar. 3, 1875 (18 Stat. 479); Act of Mar. 3, 1891 (26 Stat. 840). Superseded by Act of June 21, 1902 (32 Stat. 397), as amended by Act of Apr. 27, 1906 (34 Stat. 149).
Military prisoners, deductions from sentence for good conduct. Secs. 1, 2, 3, Act of June 21, 1902 (32 Stat. 397).
Parole of, June 25, 1910 (36 Stat. 819), as amended by act of Jan. 23, 1913 (37 Stat. 650).

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Procedure, Philippine Islands, for filing claims, etc., in court of land registration. *See* Philippine Islands.
Printing and binding:
Allotments from appropriation for, restrictions on expenditure of. Act of Aug. 1, 1914 (38 Stat. 673).
Annual reports of heads of departments, etc., time for submitting copy to Public Printer, etc. Sec. 9, Act of Aug. 1, 1914 (38 Stat. 680).
Employees in Government Printing Office not to be detailed in other executive branches of public service. Act of Aug. 1, 1914 (38 Stat. 673).
Executive departments, certificate of necessity for printing and binding to be furnished. Act of Aug. 1, 1914 (38 Stat. 673).
Expenditures from appropriations, apportionment of expenditures to work executed. Act of Aug. 1, 1914 (38 Stat. 673).
Medical Bulletin, Army, for instruction to medical officers. Act of Aug. 1, 1914 (38 Stat. 673).
Public buildings and grounds, employees, estimates and appropriations for, supervision of, etc. *See* Corps of Engineers.
Public buildings, Washington, D. C. *See* Commission of Fine Arts.
Public buildings, use of water in, from Washington Aqueduct, etc. *See* Corps of Engineers.
Public lands:
Assertion of right to, without color of title. Secs. 1 and 4, Act of Feb. 25, 1885 (23 Stat. 321).
Canal Zone, leases of. *See* Panama Canal.
Failure to extinguish fires. Secs. 2 and 3, Act of May 5, 1900 (31 Stat. 169).
Homesteads—
Additional entry, when. Sec. 2306, R. S.
not Affected by Sec. 7, Act of July 3, 1916, which is a new section to the Act of Feb. 19, 1909. (39 Stat. 344.)
Entry, mode of procedure. Sec. 2290, R. S.
Entry, who may make. Sec. 2289, R. S.
Mode of procedure. Sec. 2290, R. S.
Persons who have entered less than 160 acres Sec. 2306, R. S.
Rights of wife and minor children of persons entitled to. Sec. 2306, R. S.
Who may enter. Sec. 2289, R. S.
Widow and minor children of persons entitled to. Sec. 2307, R. S.
Inclosures on. Secs. 1 and 4, Act of Feb. 25, 1885 (23 Stat. 321).
Preference to homestead settlers. Act of Feb. 15, 1895 (28 Stat. 664).
Procedure for removal of unlawful inclosures. Secs. 2 and 6, Act of Feb. 25, 1885 (23 Stat. 321).
Removal of trespassers from. *See* Employment of military force.
Remove and destroy unlawful inclosures of. *See* Employment of military force.
Right of way for highways over. Sec. 2477, R. S.
Seizure of timber cut on the public lands. Act of Apr. 30, 1878 (20 Stat. 46).
Setting fires, etc. Secs. 1 and 3, Act of May 5, 1900 (31 Stat. 169).
Settlement on and transit over, not to be obstructed. Secs. 3 and 4, Act of Feb. 25, 1885 (23 Stat. 321).
Subject to preemption. Sec. 2257, R. S.
Public Printer, time for heads of departments to submit copy of annual reports to. *See* Printing and Binding.

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Public property:
Abandoned military reservations, disposition of. Act. of Mar. 3, 1893 (27 Stat. 593).
Army officers accountable for, to obtain certificates of nonindebtedness, etc., before final payment on discharge. Sec. 2, Act of Jan. 12, 1899 (30 Stat. 784).
Offenses on ceded districts not prohibited by Federal law, how punished. Act of July 7, 1898 (30 Stat. 717).
Philippine Islands, destruction of on military reservations. *See* Philippine Islands.
Transportation to or from expositions or fairs, etc. *See* Interstate commerce.
Unserviceable equipment, Panama Canal, may be sold without advertising. *See* Panama Canal.
Public service, record of conviction in Juvenile court, District of Columbia, not a disqualification for entering under the Federal or District Governments. Act of Apr. 27, 1916 (39 Stat. 56).
Public utilities, Philippine Islands, regulations to be adopted in connection with franchises for. *See* Philippine Islands.
Public works:
Injury to. *See* Corps of Engineers.
Navigable waters, unauthorized use of. *See* Corps of Engineers.
Puuloa Military Reservation, island of Oahu, Territory of Hawaii. Transfer of control and jurisdiction over to the Navy Department for use for naval purposes. Act of Aug. 29, 1916 (39 Stat. 642).
Quarantine of live stock, transportation, notice to carriers. *See* Interstate Commerce.
Quartermaster Corps, supply depot for, at Fort Sam Houston, Tex., acquisition of additional land and construction of. Act of Aug. 29, 1916 (39 Stat. 636).
Quartermaster's Department, appointments in, from volunteers. Act of Mar. 2, 1901 (31 Stat. 900).
Radio station, naval, Canal Zone. *See* Panama Canal.
Radio station, naval. Lands of United States under control of a particular department, etc., that have been or may hereafter be mutually selected as site for, may be transferred to control and jurisdiction of Navy Department for naval purposes. Act of Aug. 29, 1916 (39 Stat. 606).
Railroads:
Government in Alaska. Detail of Lieut. Frederick Mears to assist in location and construction of. J. Res. No. 17, May 13, 1914 (38 Stat. 772).
Preference to military traffic in time of war. Sec. 2, Act of June 29, 1906 (34 Stat. 586).
Railways, Philippine Islands, statutory regulations governing. *See* Philippine Islands.
Red Cross:
American, memorial monument to commemorate the women of the Civil War to be permanent headquarters of, and to be charged with and responsible for the care, keeping, and maintenance of the memorial and grounds, but the title to the site and building to be in United States. Act of Oct. 22, 1913 (38 Stat. 233).
Detail of medical officer with. *See* Details of Army officers.
Red Cross Association, incorporation of, etc. Act of June 6, 1900 (31 Stat. 277); Act of Jan. 5, 1905 (33 Stat. 599).

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Reformatory of District of Columbia:
Persons convicted of crimes in courts of the District and sentenced to confinement for more than one year may serve their confinement in instead of in a penitentiary, etc. Act of Sept. 1, 1916 (39 Stat. 711).
Transfer of prisoners heretofore convicted in District courts to serve remainder of terms of confinement in. Id.
Reporters, courts-martial, employment of. *See* Military tribunals.
Reservations, Indian, removal of persons from. *See* Indians.
Retired Army officers assigned to active duty as members of Alaska Board of Road Commissioners. *See* Alaska.
Revenues, Canal Zone, distribution of. *See* Panama Canal.
Revised Statutes of United States, certain sections to apply, so far as applicable to Philippine Islands. *See* Philippine Islands.
River and harbor improvements, condemnation and purchase of lands for. *See* Corps of Engineers.
River and harbor works, estimates, reports, surveys, etc., for. *See* Corps of Engineers.
Rivers and harbors:
Consolidated items of river and harbor work, with aggregate amount appropriated therefor, allotments to respective works, and disposition of balances remaining to credit of separate works or items, etc. Sec. 3, Act of Mar. 4, 1915 (38 Stat. 1052).
Donation of funds to be expended with public funds for improvement of rivers and harbors, Secretary of War authorized to receive from private parties. Sec. 4, Act of Mar. 4, 1915 (38 Stat. 1053).
Establish anchorage grounds in all harbors, rivers, bays, and other navigable waters, Secretary of War authorized to define and. Sec. 7, Act of Mar. 4, 1915 (38 Stat. 1053).
Funds contributed in excess of actual cost of work may be returned to representatives of contributing interests upon approval of Secretary of War, etc. Sec. 4, Act of Mar. 4, 1915 (38 Stat. 1053).
Rules and regulations governing, to be enforced by Chief of Engineers at ports or places where no revenue cutter is available, etc. Sec. 7, Act of Mar. 4, 1915 (38 Stat. 1053).
Secretary of War authorized to appoint a board of three officers from the Corps of Engineers to examine and appraise the value of the work and franchises of the East Canal Co. from the St. Johns River to Key West, Fla., with reference to its purchase by the Government and the construction of a free and open waterway, etc. Sec. 15, Act of Mar. 4, 1915. (38 Stat. 1058).
Road Commissioners, Board of, Alaska. *See* Alaska.
Roads, public lands, right of way for highways over. *See* Public lands.
Road tax, Philippine Islands, male persons on which imposed. *See* Philippine Islands.
Sacramento River, Cal., control, of floods in. Pars. a–c, sec. 2, Act of Mar. 1, 1917 (39 Stat. —).
St. Johns River, Fla. Secretary of War authorized to appoint a board of three officers from the Corps of Engineers to examine and appraise the value of the work and franchises of the East Coast Canal from the river to Key West, with reference to its purchase by the Government and the construction of a free and open waterway, etc. Sec. 15, act of Mar. 4, 1915 (38 Stat. 1058).
Salem, Mass., relief of fire sufferers at, expenditures under Secretary of War. Sec. 13, Act of Aug. 1, 1914 (38 Stat. 681).

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Sales, Canal Zone, construction material, etc., disposition of proceeds of. *See* Panama Canal.

Saline lands, Philippine Islands, disposition of. *See* Philippine Islands.

San Antonio, Tex. *See* Texas Bicentennial and Pan American Exposition.

San Francisco, sale by city and county of, to War Department of water supply required for the military reservations in or near the city, supplied from reservoirs in Hetch Hetchy Valley, Yosemite National Park, on certain conditions, etc. Par. (u), sec. 9, Act of Dec. 19, 1913 (38 Stat. 250).

San Jacinto Military Reservation, Tex., county or city of Galveston and other local interests to quiet all claims to title to. Act of Aug. 27 1916 (39 Stat. 398).

Schofield Barracks Military Reservation, Territory of Hawaii. Dowsett Co. (Ltd.) authorized to remove certain buildings from within specified time. Act of Aug. 29, 1916 (39 Stat. 636).

Schools, Indian:

Detail of Army officers in connection with normal and industrial training. *See* Details of Army officers.

Use of vacant military posts and barracks for normal and industrial training. *See* Details of Army officers.

Secretary of War:

Acceptance by President and, from the Lincoln Farm Association, of title to the homestead of Abraham Lincoln and the log cabin in which he was born, together with the memorial inclosing the same, and an endowment fund of $50,000 in relation thereto. The control of the property to be under the Secretary of War. Act of July 17, 1916 (39 Stat. 385).

Accept donation of funds to be expended with public funds for improvement of rivers and harbors. *See* Rivers and harbors.

Accept donation of lands and navigation improvements of the "Kyle and Young Canal" and the "Morrison Landing extension," Oklawaha River, Fla. Act of July 27, 1916 (39 Stat. 396).

Accept funds raised by New York World by popular subscription for construction of electric lighting plant for illuminating the Statue of Liberty, Bedloes Island, New York Harbor. Sec. 5, Act of July 27, 1916 (39 Stat. 411).

Anacostia River and Flats, acquisition of land in connection with reclamation and development of; adjustment of boundaries and exchange of lands with the Philadelphia, Baltimore & Washington Railroad, etc. Act of Mar. 3, 1917 (39 Stat. —).

Approve, as member of commission, site and plans for the memorial monument to commemorate the women of the Civil War, and to supervise expenditures. Act of Oct. 22, 1913 (38 Stat. 233).

Authorized to appoint a board of three officers from Corps of Engineers to examine and appraise the value of the work and franchises of the East Canal Co., from the St. Johns River to Key West, Fla., with reference to its purchase by the Government and the construction of a free and open waterway, etc. Sec. 15, Act of Mar. 4, 1915 (38 Stat. 1058).

Authorized to construct new Aqueduct Bridge. *See* Aqueduct Bridge, under Corps of Engineers.

Authorized to loan, issue, or use quartermaster's and medical supplies for the relief of destitute persons in the districts overflowed by the Mississippi River and its tributaries. J. Res. No. —, of Feb. 15, 1916 (39 Stat. 11).

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Secretary of War—Continued.
Convey to State of Wisconsin or city of Portage the title of United States to "Portage Levee." Act of July 27, 1916 (39 Stat. 401).
Establish and define anchorage grounds in all harbors, rivers, bays, and other navigable waters. *See* Rivers and harbors.
Ex officio member of national military park commissions on vacancy occurring by death or resignation of members of the commissions; and, upon vacation by all members, duties of commissioners to be performed under. Act of Aug. 24, 1912 (37 Stat. 442).
Expenditures for relief of fire sufferers at Salem, Mass., to be made under. *See* Salem, Mass.
Flood sufferers in North Carolina, South Carolina, Georgia, Alabama, Florida, Tennessee, and Mississippi, relief of, with food, supplies of the Quartermaster and Medical Department, etc. J. Res. No. — of Aug. 3, 1916 (39 Stat. 434).
Authorization extended for similar relief to flood sufferers of West Virginia. J. Res. No. — of Aug. 24, 1916 (39 Stat. 534).
Funds contributed in excess of actual cost of work may be returned to representatives of contributing interests on approval of. *See* Rivers and harbors.
Government pier in Delaware Bay near Lewes, Del., to be open to public under regulations to be prescribed by. Act of July 27, 1916 (39 Stat. 394).
Loan ensigns, flags, etc., for purpose of decorating streets during forty-ninth encampment of the Grand Army of the Republic. *See* Grand Army of the Republic.
Loan hospital tents, ambulances, horses, drivers, etc., for caring for the sick, injured, and infirm during the encampment. *See* Grand Army of the Republic.
Permits for construction of works in navigable waters of Porto Rico. *See* Porto Rico.
Permits to use reservations and other public spaces in city of Washington during encampment. *See* Grand Army of the Republic.
Superintendence and control of the Washington Aqueduct, including its rights, appurtenances, and fixtures, to remain under. Act of Sept. 1, 1916 (39 Stat. —).
Supply tents for temporary use of the sufferers from recent conflagration at Paris, Tex., etc. Act of Apr. 11, 1916 (39 Stat. 50).
Transfer of abandoned military reservation for use as home for care and treatment of persons afflicted with leprosy. Act of Feb. 3, 1917 (Pub. No. 299, 39 Stat. —).
Sequoia National Park:
See also National parks.
Removal of trespassers, etc., from. *See* Employment of military force.
Shiloh National Military Park. *See* National military parks.
Signal Office:
Employment of one radio engineer and such radio assistants as the Secretary of War may deem necessary, but the number of persons so employed, their duties, and compensation to be reported to Congress with the annual estimates. Act of May 10, 1916 (39 Stat. 91).
Employment of skilled draftsmen and such other services as the Secretary of War may deem necessary, but the number of persons so employed, their duties, and compensation to be reported to Congress with the annual estimates. Id.

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Signal Office—Continued.
Signal Corps, supply depot for, on Fort Sam Houston Military Reservation, Tex., acquisition of additional land and construction of. Act of Aug. 29, 1916 (39 Stat. 636).
Small arms, authorization for sale of rifles and ordnance to Cuba. *See* Cuba.
Soldiers' Home:
Medical Department of Army authorized to sell medical and hospital supplies to, at contract price. Sec. 1, Act of June 4, 1897 (30 Stat. 54).
See also National Home for Disabled Volunteer Soldiers.
National Home for Disabled Volunteers–
Inspection of. *See* Inspector General's Department.
National Sanitarium at Hot Springs, S. Dak., in connection with. *See* Medical Department.
State and Territorial homes to be paid for care of disabled soldiers and sailors. *See* National Homes for Disabled Volunteer Soldiers.
South Carolina flood sufferers of 1916, Secretary of War authorized to relieve with food, supplies of the Quartermaster and Medical Departments, etc. J. Res. No. —, of Aug. 8, 1916 (39 Stat. 434).
Southern Pacific Railroad, post route and military road. *See* Transportation.
South Pass, Mississippi River, location and extent, regulations for, etc. *See* Corps of Engineers.
Spanish-American War, reimbursement of State of Kentucky for expenses in aiding to raise volunteers for. Act of Feb. 26, 1917 (Pvt. No. 201, 39 Stat. —).
Spanish-American War, replacing ordnance and ordnance stores carried into. *See* Militia.
Speedways, Potomac Park, D. C., restrictions on. *See* Corps of Engineers.
Spies, punishment of, by courts-martial. *See* Military tribunals.
State or Territorial homes for disabled soldiers and sailors:
Collections from inmates for support of. *See* Medical Department.
Loss of appropriation where permit sale of intoxicating liquors. *See* Medical Department.
State and Territorial homes, to be paid for care of disabled soldiers and sailors. *See* National Homes for Disabled Volunteer Soldiers.
Statue of Liberty on Bedloes Island, New York Harbor, acceptance by Secretary of War of funds raised by New York World through popular subscription for construction of electric lighting plant for illumination of. Sec. 5, Act of July 27, 1916 (39 Stat. 411).
Statutes at Large, Little & Brown's edition of, to be competent as evidence. *See* Military tribunals.
Suarez, Señor Eduardo, thanks of Congress and gold medal presented to for services as mediator between United States and warring parties in Mexico. *See* Medals.
Subsistence:
Allowance of, for Army officers detailed with Coast and Geodetic Survey. *See* Details of Army officers.
Allowance to persons traveling on official business outside District of Columbia. *See* District of Columbia.
Subsistence Department, appointments in, from volunteers. Act of Mar. 2, 1901 (31 Stat. 900).
Supply depots for the Quartermaster Corps, the Medical Department, the Corps of Engineers, and the Signal Corps, on the Fort Sam Houston Military Reservation, Tex. Acquisition of additional land for and construction of. Act of Aug. 29, 1916 (39 Stat. 636).

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Supreme Court of United States:
Final judgment or decree rendered by State court of last resort affecting the validity of a treaty, Federal statute, etc. may be reexamined and reviewed in on writ of error. Sec. 2, Act of Sept. 6, 1916 (39 Stat. 726).
no Judgment or decree rendered by the Supreme Court of the Philippines, 60 days after passage of this Act shall be reviewed by, upon writ of error or appeal, but may require the case to be certified to it by certiorari or otherwise. Sec. 5, id. 727.
Surgeon General's Office, library of, binding and location. *See* Medical Department.
Taxes, property owned by the Daughters of the American Revolution in District of Columbia exempted from. Act of Aug. 15, 1916 (39 Stat. 514).
Telegraph lines, Philippine Islands, statutory regulations governing. *See* Philippine Islands.
Telegraph operators, military, during Civil War, record and certificate of service to persons who served as. Act of Jan. 26, 1897 (29 Stat. 497).
Telephone lines, Philippine Islands, statutory regulations governing. *See* Philippine Islands.
Tents and cots, loan of to the United Confederate Veterans for the encampment to be held at Birmingham, Ala., May, 1916. J. Res. —, of Feb. 15, 1916 (39 Stat. 10).
Tents, hospital:
Secretary of War authorized to loan ambulances, horses, drivers, etc. and for caring for the sick, injured, and infirm during the forty-ninth encampment of the Grand Army of the Republic. *See* Grand Army of the Republic.
Secretary of War authorized to supply for temporary use of the sufferers from recent conflagration at Paris, Tex., etc. Act of Apr. 11, 1916 (39 Stat. 50).
Tennessee flood sufferers of 1916, Secretary of War authorized to relieve with food, supplies of the Quartermaster and Medical Departments, etc. J. Res. No. — of Aug. 3, 1916 (39 Stat. 434).
Texas Bicentennial and Pan American Exposition to be held at San Antonio, Tex., about Nov. 1, 1918. J. Res. No. —, June 5, 1916 (39 Stat. 217).
Thanks of Congress and gold medal presented to Senors Domicio da Gama, Romulo S. Naon, and Eduardo Suarez for services as mediators between United States and warring parties in Mexico. *See* Medals.
Timber:
Cut on public lands, seizure of. *See* Public lands.
Cutting and felling on public lands. *See* Employment of military force.
Dead and fallen and depredations on Indian reservations. *See* Indians.
Philippine Islands, cutting or destroying, standing on reservations. *See* Philippine Islands.
Tolls, Panama Canal, exemption of coastwise vessels repealed. *See* Panama Canal.
Toll roads and bridges, Philippine Islands, Governor General to approve rates. *See* Philippine Islands.
Tonnage tax, Philippine Islands, levied on foreign vessels entering United States from. *See* Philippine Islands.
Torpedoes, mines, etc., for harbor defenses, injuries to. *See* Corps of Engineers.
Traders, post, vacancies in position of not to be filled. *See* Post traders.

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Transportation:
Atlantic & Pacific Railroad to be post route and military road. Sec. 11, Act of July 27, 1866 (14 Stat. 297).
Explosives for military service. *See* Interstate commerce.
Heavy freight on certain reaches of the Mississippi River, Chief of Engineers or board appointed by Secretary of War, to experiment with in certain type of tows and barges at all stages of water. Act of July 27, 1916 (39 Stat. 403).
Northern Pacific Railroad to be post route and military road. Sec. 11, Act of July 2, 1864 (13 Stat. 370).
Public property to or from fairs or expositions, etc. *See* Interstate commerce.
Quarantine of live stock, notice to carriers. *See* Interstate commerce.
Southern Pacific Railroad to be post route and military road. Sec. 18, Act of July 27, 1866 (14 Stat. 299).
Union and Central Pacific Railroad to be post route and military road. Sec. 6, Act of July 11, 1862 (12 Stat. 493).
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